

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1484

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 77-1484

UNITED STATES OF AMERICA,

Appellee,

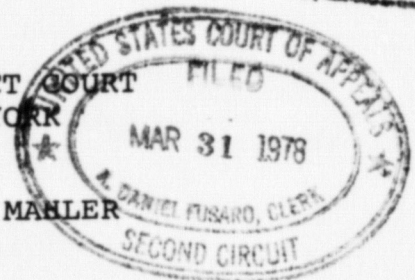
v.

ARNOLD NELSON MAHLER and
DEAN H. UBBEN,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX FOR APPELLANT ARNOLD NELSON MAHLER



James E. Sharp
A. Raymond Randolph, Jr.
N. Richard Janis

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PAGINATION AS IN ORIGINAL COPY

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OFFENSE NO	0208 1	0848	MAHLER, ARNOLD NELSON (a/k/a Arnold Nelson)	Case Filed Mo. Day 11 11	76 1047 01
PLAINT NO	X			No. of Dets * 10	
JUVENILE					

15:77(q)a, 17x	Stock Fraud	1,4,6,7
18:1343	Wire Fraud	2,5,11
18:1341	Mail Fraud	3,8,10,12
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KEY DATES & INTERVAL		ORIGINAL COUNTS		SUPERSEDING COUNTS	
ARREST	11-11-76	11-11-76			
10-4-77					

Search Warrant	Issued	DATE	INITIALS	MAGISTRATE	INITIAL/NO.	OUTCOME
Arrest Warrant	Returned					
Summons	Issued					
Arrest Warrant	Served					
COMPLAINT						

U.S. Attorney or Asst.	ATTORNEYS
Jed S. Rakoff 791-0011	PAUL BERMAN- 25 B'way NYC 10004- William P. Ford 25 B'way N.Y.N.Y. 10004.

Bialek-06, Hughes-07, Bachmann-08, Knight-09, Dutzar-10		Ubben-02, Lovejoy-03, Greenberg-04, Rind-05
DATE	DESCRIPTION	EXCLUDABLE DELAY
11-11-76	Filed Indictment. B/W Ordered.....Cooper, J. B/W Issued.	
11-11-76	Deft. (atty. Mortimer L. Mahler present) produced in Court pursuant to Bench Warrant. Pleads not guilty. Ordered F/P. Bail fixed in amount of \$25,000 cash/surety. Deft. R.O.R. to 4 p.m. 11-12-76 to post bail. Deft. to surrender passport to AUSA Rakoff. Special counsel present, David J. Scheichet given 48 hours to file notice of appearance.....Cooper, J.	
11-12-76	Filed deft's. appearance bond in the sum of \$25,000.00 - Midland Insurance Company.	
11-18-76	Case assigned to Frankel, J. for all purposes.....Cannella, J.	
11-29-76	Filed deft's. appearance bond in the sum of \$25,000.00 - Midland Insurance Company.	
12-3-76	Pre-trial Conference held.	3 12-3-76 E 1

- X12-6-76 Filed ORDER allowing the Deft to be released for the Thanksgiving holidays. Signed Cannella, J.
- X12-3-76 Filed CJA 23 Financial Affidavit
- X12-9-76 Filed CJA 20 Appointing of Counsel.
- X12-15-76 Fld. Deft. Mahler Show Cause Order with affdvt. why an order should not be entered granting deft. Mahler any part or all of the relief as indicated. ret: 12-20-76. No service to date. ... Frankel, J.
- X12-15-76 Filed Deft. MAHler Memo of Law in support of the deft's application for issuance of show cause order.
- X12-16-76 Fld. Notice of Appearance of Paul R. Bergaman.
- X12-23-76 Filed REPLY AFFIDAVIT of Paul B. Bergman.
- X1-3-77 Filed MOTION FOR BILL OF PARTICULARS - and Proof of Service.
- X1-3-77 Filed MOTION FOR DISCOVERY and inspection pursuant to rules 12(d) (2) and 16, F.R. Crim. P. and all exculpatory material. - and proof of service.
- X1-4-77 Filed MEMO-ENDORSED on deft's order to show cause filed 12-16-76. Upon the factual and legal grounds given in the opposing affidavit this motion is in all respects denied. So ordered FRANKEL, J. m/n
- X1-5-77 Filed Govt's Affidavit in response to Deft's allegation of Grand Jury Abuse.
- X1-7-77 Filed MOTION TO DISMISS & Affidavit of the deft. For an order dismissing Counts Two thru Ten, and Cts thirteen and Fifteen.
- X2-1-77 Filed MEMORANDUM for counsel- trial is to begin at 10:00 AM 4-4-77. Requests to charge and voir dire requests are to be served and filed on or before March 28, 1977. Etc. So ordered FRANKEL, J. m/n
- X2-18-77 Filed Deft's Reply Affdvt. to the argument made in Govt's Memo of Law in opposition to deft's pre-trial motions.
- X2-24-77 Filed Govt's AGREEMENT as to reciprocal pre-trial discovery between the govt and deft Ubben.
- X2-24-77 Filed Govt's Memorandum of Law in opposition to deft's pre-trial motions.
- X2-24-77 Govt's
Filed/Responses to deft's motions for bill of particulars and other relief and responses to requests for inspection and discovery.
- X2-24-77 Filed Govt's Affidavit in response to the pre-trial motions.
- X2-25-77 Filed MEMO-ENDORSED on motion filed 1-3-77 asking for a bill of particulars. Granted and denied in part. ... SO ORDERED ... FRANKEL, J. m/n.

Cont'd on page 3

UNITED STATES DISTRICT COURT

CRIMINAL DOCKET

U. S. vs

MAHLER, ARNOLD NELSON
a/k/a Arnold Nelson

76

10/7

01

Yr.

Docket No.

Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
2-25-77	Filed MEMO-ENDORSED on motion to dismiss filed 1-7-77 - Motion denied. So ordered ... FRANKEL, J. m/n				
2-25-77	Filed MEMO-ENDORSED on def't's motion for discovery and inspection, filed 1-3-77 - Except to the extent consented to by the govt this motion is denied. So ordered... FRANKEL, J.m/n.				
2-28-77	Filed NOTICE OF MOTION for an order calling for the production of documents for the trial of this case, etc.				
3-2-77	Filed transcript of record of proceedings, dated 11-11-76				
3-2-77	Filed transcript of record of proceedings, dated 11-18-76				
3-10-77	Filed ORDER that Thomas R. Esposito, 25 B'way N.Y. 10004 is hereby added to the Panel of Attys for the sole purpose of representing the def't in this matter. So ordered EDELSTEIN. CH, J. (copy to Millie).				
3-10-77	Filed CONSENT ORDER substituting counsel for def't. (William P. Ford, 25 B'way, N.Y.N.Y. 10004. Tel: 212-269-4900. So ordered FRANKEL, J. (Copy to Millie)				
3-2-77	Filed ^{Gov't's} Def't's Bill of Particulars with respect to this def't.				
3-23-77	Filed ORDER the def't appear before this court with counsel and gov't counsel at 10 AM. on 3-23-77. So ordered FRANKEL, J. m/n.				
3-24-77	Filed CONSENT ORDER that the def't is to be observed and examined by a qualified psychiatrist, Stanley Portnow to determine def't's competency to understand the charges against him. So ordered FRANKEL, J.	3	3-24-77	n	
3-28-77	Filed Def't's MEMORANDUM OF LAW in support of his motion to preclude the Gov't's use of def't's prior conviction to impeach him.				
3-30-77	Filed MEMORANDUM - def't is competent, indeed. Based on Dr. Portnow's report. So ordered FRANKEL, J. m/n				
3-30-77	Filed MEMORANDUM FOR COUNSEL - adj. trial to 4-11-77. So ordered FRANKEL, J. m/n				
4-4-77	Filed Acknowledgment of advice as to constitutional rights with respect to a guilty plea.				
4-20-77	Filed One Brown Envelope containing Affidavit of Jed S. Radoff concerning material under 18USC 3500 relating to Donna Jean Brighton, ordered sealed and impounded. ...FRANKEL, J.				
4-11-77	Trial began.				
4-12-77	" Cont'd				
4-13-77	" "				
4-14-77	" "				
4-18-77	" "				
4-19-77	" "				
4-20-77	" "				
4-21-77	" "				
4-25-77	" "				
4-27-77	Filed ONE WHITE ENVELOPE ordered sealed and impounded. FRANKEL, J.				

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE	
		(a)	(b)
4-25-77	Trial Cont'd		
4-26-77	" "		
4-27-77	" "		
4-28-77	" "		
4-29-77	" "		
5-2-77	" "		
5-3-77	" " Govt rest.		
5-4-77	" " Ct. 3 dismissed as to all defts. on trial.		
5-5-77	Trial Cont'd.		
5-6-77	" "		
5-9-77	" "		
5-10-77	" "		
5-11-77	" " Counts 11,12,13 as to all defts dismissed by court.		
5-12-77	" "		
5-13-77	" "		
5-16-77	" "		
5-17-77	" "		
5-18-77	" "		
5-19-77	" " all parties cont'd.		
5-20-77	" "		
5-23-77	" "		
5-24-77	" "		
5-25-77	" "		
5-26-77	" " Due to illness and hospitalization of a juror - mis-trial is declared. Remaining defts on trial cont'd on bail as previously set. FRANKEL, J.		
6-3-77 X	Filed Deft's Motion to extend bail limitations to the continental U.S. Affidavit of service on motion.		
6-3-77 X	Filed Deft's Memorandum of points and authorities in support of motion of deft for judgment of acquittal or such other relief as the court finds appropriate. with affidavit of service.		
6-9-77 X	Filed CJA 20 Appointment & voucher for counseling services. Copy #5.		
6-13-77 X	Filed Govt's MEMORANDUM in opposition to motions of the deft for judgments of acquittal following discharge of the jury.		
6-14-77 X	Filed Memo End. on Notice of motion dtd: 6-3-77.== Motion denied So Ordered...Frankel, J. M/N		
6-17-77 X	Filed Memorandum & Order Defts. Arnold N. Mahler, Jerrold R. Bachmann, and John J. Hughes, III move pursuant to Rule 29(c) Fed. R. Crim. P. for judgments of acquittal following the discharge of the jury without a verdict at their recent trial. Messrs. Bachmann & Hughes move in the alternative for a severance and change of venue in any retrial which takes place. The court concludes that the various motions must be denied...So Ordered. FRANKEL, J. m/n		
6-20-77 X	Filed reply affdvt. by deft. in support of motion to extend bail limits to continental U.S.		
6-22-77 X	Filed deft.'s memo. of law in support of his motion to preclude the Govt.'s use of Mahler's prior conviction to impeach him.		
6-22-77 X	Filed Govt.'s voir dire requests.		
6-22-77 ✓	Filed notice that the action is reassigned to Judge Pollack. m/n		
7-20-77 X	Filed transcript of record of proceedings, dated Apr. 11, 12, 13, 14, 1977.		

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
06-29-77	Filed Govt.'s suppl. requests to charge.				
06-29-77	Filed Govt.'s trial memorandum.				
07-11-77	Pre-trial conf. held before Judge Pollack.	2	7-11	E	1
7-20-77	Filed transcript of record of proceedings, dated 10-27-76, 2-28-77, 3-2, 23-77.				
7-20-77	Filed transcript of record of proceedings, dated Apr. 11, 12, 13, 14, 1977.				
7-20-77	Filed transcript of record of proceedings, dated Apr. 18, 19, 20, 21, 1977.				
7-20-77	Filed transcript of record of proceedings, dated Apr. 25, 26, 27, 1977.				
7-20-77	Filed transcript of record of proceedings, dated Apr. 28, 29, 1977.				
7-20-77	Filed transcript of record of proceedings, dated May 2, 3, 1977.				
7-20-77	Filed transcript of record of proceedings, dated May 4, 5, 6, 9, 1977.				
7-20-77	Filed transcript of record of proceedings, dated May 10, 11, 12, 13, 1977.				
7-20-77	Filed transcript of record of proceedings, dated May 16, 17, 18, 1977.				
7-20-77	Filed transcript of record of proceedings, dated May 19, 20, 23, 24, 1977.				
08-01-77	Filed CJA 20 approval for payment of fees of atty. Paul Bergman. Frankel, J. issued all copies.				
08-01-77	Filed MEMORANDUM that the defts.' having in open court on the 2-28-77 record orally waived the requirements of the Speedy Trial Act and having requested a continuance and the Court having found for the reasons stated on the record at the hearing that the public interest and the interests of justice require a continuance of trial pursuant to Rule 3616(a)(8) the Court fixed the trial date hereof for commencement on 01-3-77. Pollack, J. m/n				
08-11-77	FILED MAY 1977				
08-15-77	Filed Deft's affdvt. & notice of motion for change of counsel pursuant to Criminal Justice Act. ret. 10/3/77				
08-19-77	Bench Warrant Ordered. Pollack, J.				
08-26-77	Before Pollack, J. Deft (atty Morton Katz present) B/W vacated. Pollack, J.				
08-31-77	Filed transcript of record of proceedings, dated 07-11-77				
09-01-77	Filed affdvt. of Robert P. Leighton re: assignment of counsel.				
09-01-77	Filed affdvt. of Pamela Rogers Chepiga re: change of counsel.				
09-01-77	Filed affdvt. of James E. Sharp re: change of counsel.				
09-01-77	Filed memo-end. on motion docketed 8-15-77. Motion denied. etc. Pollack, J. m/n				
09-08-77	Filed Govt.'s proposed examination of prospective jurors.				
09-12-77	Filed deft.'s notice of motion for change of counsel				
09-14-77	Filed memo-end. on letter from deft. to Judge Pollack. (motion) dated 9-12-77. Motion denied. Pollack, J. m/n				
09-27-77	Filed Govt's Memorandum of Law respecting Admissibility of certain similar act and impeachment evidence.				
09-27-77	Filed memo-end. on letter dated 9-26-77 from deft. to Judge Pollack...The within motions have been individually considered and since time is asserted by the moving party to be of the essence, this memorandum shall suffice as embracing the Court's rulings and the minute clerk is directed to forthwith telephone to counsel to advise them of the disposition hereby made. Each of the four motions presented herewith is denied. Pollack J. so ordered 9-27-77 m/n				

AO 256A

Interval Start Date Ltr. Total
per Section 111 End Date Code Days

Date	FBI MEMORANDUM (continued)	EXEMPTIBLE (a) (b)
X 9-23-77	Filed deft.'s waiver of right to speedy trial.	2 9-23
X 9-30-77	Filed memo-end. on letter treated as motion for reconsideration.	
	The matter has been sufficiently exposed and considered and	
	decided. Pollack, J. m/n	
X 10-04-77	Filed Govt.'s memo. of law in support of appl. to prohibit	
	reference to the prior acquittals of three co-defts.	
X 10-04-77	Filed deft.'s motion re: dismissal ret: no date.	
X 10-04-77	Filed deft.'s motion for change of counsel ret: nodate.	
X 10-4-77	Filed Superseding Indictment & referred to Pollack, J.	
	Stewart, J.	
X 10-04-77	Filed CIA 20 approval for payment of atty. William P. Ford	
	Frankel, J. issued all copies.	
X 10-03-77	Filed ORDER -re: subpoenas to be prepared by defense counsel	
	to produce documents and testimony, etc. Pollack, J. mn	
X 10-05-77	Filed deft.'s motion for severance.	
X 10-05-77	Filed deft.'s motion to grant an order precluding the Govt.	
	from introducing prior convictions on their direct case.	
X 10-05-77	Filed deft.'s motion to dismiss.	
X 10-05-77	Filed deft.'s motion to obtain transcripts.	
X 10-05-77	Filed memo-end. on motion docketed 10-4-77. motion for	
	change of counsel.....denied. Pollack, J. m/n	
X 10-05-77	Filed memo-end. on motion docketed 10-4-77...motion to dismiss	
	denied..... Pollack, J. m/n	
X 10-06-77	Filed memo-end. on motion docketed 10-5-77...motion for	
	severance is denied.....Pollack, J. m/n	
X 10-06-77	Filed memo-end. on motion docketed 10-5-77...motion to change	
	return date of subpoenas....granted. Pollack, J. m/n	
X 10-06-77	Filed memo-end. on motion docketed 10-5-77...motion to dismiss	
	is denied.....Pollack, J. m/n	
X 10-06-77	Filed memo-end. on motion docketed 10-5-77...motion to obtain	
	transcripts..denied.....Pollack, J. m/n	
X 10-06-77	Filed deft.'s motion to grant an order precluding the Govt.	
	from the use of prior convictions for impeachment.	
X 10-11-77	Filed Govt.'s proposed pre-trial change to the jury on	
	securities terms and issues.	
X 10-11-77	Filed memo-end. on motion for continuance and for leave to	
	file motions....denied. Pollack, J. m/n	
X 10-11-77	Filed memo-end. on motion docketed 10-06-77 Motion to grant	
	an order precluding the Govt. from the use of prior convictions	
	for impeachment.....denied. Pollack, J. m/n	
X 10-11-77	Filed memo-end. on motion docketed 10-5-77 Motion to grant	
	an order precluding the Govt. from introducing prior con-	
	victions on their direct case....denied. Pollack, J. m/n	
X 10-12-77	Filed ORDER excusing juror Carlo Delfino, etc. Pollack, J. m/n	
X 10-11-77	Before: Pollack, J. - Jury trial begun as to both defts.	
X 10-12-77	Trial cont'd.	
X 10-13-77	Trial cont'd.	
X 10-19-77	Trial cont'd.	
X 10-14-77	Filed transcript of record of proceedings dated 10-5-77. K	
X 10-20-77	Filed Govt.'s request to charge.	
X 10-25-77	Filed subpoena to produce document or object and return: ✓	
	served on 10-17-77.	

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs

Mahler, Arnold Nelson

76 1047

01

Yr.

Docket No.

Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
	(Document No.)	(a)	(b)	(c)	(d)
X 10-20-77	Trial cont'd.				
X 10-21-77	Trial cont'd. Motions of deft. denied.				
X 10-24-77	Trial cont'd.				
X 10-25-77	Trial cont'd.				
X 10-26-77	Trial cont'd. & concluded. Deft. found guilty as charged. Deft. moves to set aside jury verdict...denied. Govt. moves to increase bail...denied. P.S.R. ordered. For sent. 12-8-77				
	Deft. cont'd. on bail. Pollack, J.				
11-10-77	Filed transcript of record of proceedings, dated Oct 11, 12, 13, 14, 1977.				
11-10-77	Filed transcript of record of proceedings, dated Oct 20, 21, 24, 1977.				
11-10-77	Filed transcript of record of proceedings, dated Oct 25, 26, 1977.				
X 12-07-77	Filed transcript of record of proceedings, dated 9-14-77.				
X 12-07-77	Filed transcript of record of proceedings, dated 9-20-77.				
	Filed transcript of record of proceedings, dated Aug 19, 1977				
X 12-08-77	Filed transcript of record of proceedings, dated Aug 26, 1977				
X 12-08-77	Filed transcript of record of proceedings, dated Oct 6, 1977				
X 12-08-77	Deft.'s (atty. present) Govt's oral application for a nolle prosequi is granted. Pollack, J.				
X 12-08-77	Filed JUDGMENT-(atty. James E. Sharp and M. Richard Janis) 4 yrs. on ea. of cts. 1,4,6,7, to run conc. 4 yrs. on ea. of cts 2,5,9,11 to run conc. w/ea. other 4 yrs. on ea. of cts.3,8,10,12, to run conc. w/ea. other. 4 yrs. on ct. 13. Sent. on ea. of cts.1,4,6,7 as a group, cts.2,5,9,11 as a group and cts.3,8,10,12 as group shall run consecutively w/ea. other. Sentence on ct.12 is to conc. w/sents. on 1-12 both inclusive. Total confinement 12 yrs. Execution of this judgment is stayed pending decision of the Court of Appeals on the order remandin the deft. forthwith, conditional on immediate application to the Court of Appeals. Pollack, J. issued all copies				
X 12-08-77	Filed deft.'s notice of appeal from judgment docketed this date. Mailed copies to U.S. Atty. & atty.				

A TRUE COPY

RAYMOND E. BUNCHARDT, Clerk

By B. L. Jones
Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

-vs-

ARNOLD NELSON MAHLER and
DEAN UBBEN

CASE NO. 76 Cr. 1047

JUDGE POLLACK



-----X
EXTRACT OF DOCKET ENTRIES

DATE

PROCEEDINGS

Nov. 10, 1977	Filed transcript of record of proceeding's dated, Oct. 11,12,13,19, 1977.
Nov. 10, 1977	Filed transcript of record of proceeding'd dated, Oct. 20,21,24, 1977.
Nov. 10, 1977	Filed transcript of record of proceeding's dated, Oct. 25,26, 1977.
Dec. 14, 1977	Filed transcript of record of proceeding;s dated, Dec. 8, 1977.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA

-vs-

ARNOLD NELSON MAHLER and
DEAN UBBEN

CASE NO. 76 Cr. 1047

JUDGE POLLACK

-----X
EXTRACT OF DOCKET ENTRIES

DATE

PROCEEDINGS

2-23-78

Filed transcript of record of proceeding's
dated, 10-3-77.

2-23-78

Filed transcript of record of proceeding's
dated, 10-4-77.

77-16
RECEIVED
BY *[Signature]*
DEPT. OF JUSTICE

11 11 76 10:17

X

LAST FIRST MIDDLE

JUVENILE

10

U.S. TITLE SECTION

15:77(q)a,77x
18:1343
18:1341
18:371

OFFENSES CHARGED

Stock Fraud
Wire Fraud
Mail Fraud
Consp. to commit stock fraud

ORIGINAL COUNTS

1,4,6,7
2,5,9,11
3,8,12
13

U.S. MAG
CASE NO

BAIL • RELEASE

☐ Denied
☐ Set
☐ \$ 000
☐ Date
☐ Bail Not Made
☐ Status Changed (See Docket)

☐ AMT
☐ Fugitive
☐ Pers. Recog
☐ PSA
☐ Conditions
☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd
☐ Pity Cost
☐ Other

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began	High Risk Date	11-18-76	Trial Set For
Summons Served	Indict. Waived	11-18-76	Voir Dire
First Appearance	In Charging District	1st Plea 11-18-76	Trial Began
	Superseding Indict/Info	Final Plea	Trial Ended
	10-4-77		

SUPERSEDING
COUNTS

SENTENCE

Disposition of Charges

☐ Convicted
☐ Acquitted
☐ Dismissed

☐ On All Charges
☐ On Lesser *
Offense(s)
☐ WOP
☐ WP
☐ On Government's Motion

MAGISTRATE

DATE	INITIAL/NO	INITIAL APPEARANCE DATE	INITIAL/NO	OUTCOME
Search Warrant	Issued	PRELIMINARY EXAMINATION	Date Scheduled	☐ DISMISSED
Summons	Issued	OR	Date Held	HELD FOR GJ OR OTHER PRO- CEEDING IN THE DISTRICT
Arrest Warrant	Served	REMOVAL HEARING		HELD FOR GJ OR OTHER PRO- CEEDING IN THE DISTRICT
COMPLAINT		☐ WAIVED ☐ NOT WAIVED	Tape Number	
OFFENSE		☐ INTERVENING INDICTMENT		

U.S. Attorney or Asst.

Jed S. Rakoff
791-0011

ATTORNEYS

Defens. ☒ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other

EDWARD S. PARZER
299 B'way
N.Y.N.Y. 10007
Tel: 349-6128

Show last names and suffix numbers of other defendants on same indictment/information

Mahler-01, Lovejoy-03, Greenberg-04, Rind-05

Bialek-06, Hughes-07, Bachmann-08, Knight-09, Dutzar-10

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
11-11-76		Filed Indictment. B/W Ordered.....Cooper, J. B/W Issued.	
11-8-76		Filed def't's. unsecured PRB in the sum of \$10,000 - acknowledged by the Clerk.	
11-18-76		Def't. (atty. Edward H. Panzer present) (B/W vacated) pleads not guilty. Bail fixed at \$10,000 PRB unsecured. Ordered F/P. Def't. Ordered to turn over any and all passports in his possession to AUSA Rakoff. Case assigned to Frankel, J. for all purposes.....Cannella, J.	
11-23-76		Filed NOTICE OF APPEARANCE of Edward S. Parzer, 299 B'way, N.Y.N.Y. 10007, Tel: 349-6128.	
12/3/76		Filed MEMORANDUM for counsel. Motions should be filed not later than 12-20-76. So ordered Frankel, J. m/n	
12-3-76		Pre-trial Conference held.	3 12-3-76 E 1
2-1-77		Filed MEMORANDUM for counsel - trial is to begin at 10:00 AM 4-4-77. Requests to charge and voir dire requests are to be served and filed on or before March 28, 1977, etc. So ordered Frankel, J. m/n	

10

DOCUMENT NO. 1-

-20-77

Filed One Large Brown Envelope containing Affidavit of Jed S. Radoff concerning material under 18 USC 3500 relating to Donna Jean Brighton, ordered sealed and impounded....FRANKEL, J.

4-11-77

Trial began.

4-12-77

" cont'd

4-13-77

" "

4-14-77

" "

4-18-77

" "

4-19-77

" "

4-20-77

" "

4-21-77

" "

4-25-77

" "

4-27-77

Filed One White Envelope ordered sealed and impounded. FRANKEL, J.

4-26-77

Trial Cont'd.

4-27-77

" "

4-28-77

" "

4-29-77

" "

5-2-77

" "

5-3-77

" "

5-4-77

" Govt rest. Ct. 3 dismissed as to all defts. on trial.

5-5-77

" "

5-6-77

" "

5-9-77

" "

5-10-77

" "

5-11-77

" Counts 11, 12 & 13 as to all defts dismissed by court.

5-12-77

" "

5-13-77

" "

5-16-77

" "

5-17-77

" "

5-18-77

" "

5-19-77

" all parties rest.

5-20-77

" "

5-23-77

" "

5-24-77---

" "

5-25-77

" "

5-26-77

" Due to illness and hospitalization of a juror - mistrial is declared. Remaining defts on trial cont'd on bail as previously set. FRANKEL, J.

6-9-77

Filed CJA 20 Appointment & voucher for counseling services, Copy # 5.

6-22-77

Filed deft.'s questions for the voir dire.

6-22-77

Filed Govt.'s voir dire requests.

06-22-77

Filed notice that the action is reassigned to Judge Pollack. m/n

06-29-77

Filed Govt.'s trial memorandum.

06-29-77

Filed Govt.'s pre-trial requests to charge.

07-11-77

Pre-trial conf. held before Judge Pollack.

7-20-77

Filed motion for judgment of acquittal, dated Apr. 11, 12, 13, 14, 1977.

7-20-77

Filed transfer of records of proceedings, dated Apr. 18, 19, 20, 21, 1977.

V. EXCLUDABLE DEL

(a) (b) (c)

DATE	PROCEEDINGS (continued)	(a)	(b)	(c)
7-20-77	(Document No.) Filed transcript of record of proceedings, dated Apr 25, 26, 27, 1977			
7-20-77	Filed transcript of record of proceedings, dated Apr. 28, 29, 1977.			
7-20-77	May 2, 3, 1977.			
7-20-77	Filed transcript of record of proceedings, dated May 4, 5, 6, 9, 1977.			
7-20-77	Filed transcript of record of proceedings, dated May 10, 11, 12, 9, 1977.			
7-20-77	Filed transcript of record of proceedings, dated May 16, 17, 18, 1977.			
7-20-77	Filed transcript of record of proceedings, dated May 19, 20, 23, 24, 1977.			
08-01-77	Filed MEMORANDUM- continuance granted pur. 18:3161(h)(8) ... trial set for 10-3-77. Pollack, J.	2	8-1	T
08-26-77	Filed CJA 20 appt. of counsel- Edward S. Panzer-299 Bway, NY, NY 10007-Tel: 349-6128. Connor, J. Issued All copies.			
08-26-77	Filed CJA 20 approval for payment of fees for atty. Edward C. Panzer. Frankel, J. Issued all copies.			
08-31-77	Filed transcript of record of proceedings, dated 07-11-77			
09-08-77	Filed Govt.'s proposed examination of prospective jurors.			
10-4-77	Filed Govt.'s memo. of law re: support of appl. to prohibit reference to prior acquittals of three co-defts.			
10-4-77	Filed Superseding Indictment & referred to Pollack, J.Stewart, J.			
10-11-77	Filed Govt.'s proposes pre-trial charge to the jury on securities terms and issues:			
10-12-77	Filed ORDER excusing juror Carlo Delfino, etc. Pollack, J. m/n			
10-11-77	Before Judge Pollack- jury trial begun as to both defts.			
10-12-77	Trial cont'd.			
10-19-77	Trial cont'd.			
10-19-77	Trial cont'd.			
10-14-77	Filed transcript of record of proceedings, dated 10-5-77.			
10-20-77	Filed Govt.'s request to charge.			
10-20-77	Trial cont'd.			
10-21-77	Trial cont'd. Motions of both defts. are denied.			
10-24-77	Trial cont'd.			
10-25-77	Trial cont'd.			
10-26-77	Trial cont'd. & concluded. Deft. found guilty as charged. Deft. moves to set aside the jury verdict -denied. Govt. moves for remand of deft. Mahler and for increase of bail of deft. Ubben - denied. P.S.R. ordered. For sent. 12-8-77 at 10 AM. room 906 Deft. cont'd. on bail previously set. Bail limits to include E.D.N.Y. S.D.N.Y. and Dist. of N.Jersey. Pollack, J.			
11-10-77	Filed transcript of record of proceedings, dated Oct 11, 12, 13, 1977			
11-10-77	Filed transcript of record of proceedings, dated Oct 20, 21, 24, 1977.			
11-10-77	Filed transcript of record of proceedings, dated Oct 25, 26, 1977.			
	Filed transcript of record of proceedings, dated Oct 6, 1977			
12-08-77	Deft.'s (atty. present) Govt's oral application for a nolle prosequi is granted. Pollack, J.			
12-09-77	Filed deft.'s notice of appeal from judgment of 12-8-77. Filed copies to U.S. Atty. & atty.			

S DISTRICT COURT
DOCKET

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
12-08-77	(Document No.) Filed Judgment (atty. David Blackstone) 4 yrs. on cts.1,4,6,7 to run conc. 4 yrs. on cts.2,5,9,11 to run conc. 4 yrs. on cts 3,8,10,12 to run conc. 4 yrs. on ct. 13. Sentences on cts. 1,4,6,7,2,5,9,11 on the one and on each of cts.3,8,10,12 13 consecutively with each other for a total of 8 years. Deft. cont'd. on present bail terms pending the posting of bail pending appeal fixed at \$20,000. cash or surety, which is to be posted by 12-14-77 at 3PM. Pollack,J. issued all copies				

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA, :

-v- :

ARNOLD NELSON MAHLER,
(a/k/a Arnold Nelson),
DEAN H. UBBEN,
BILLY B. LOVEJOY,
MARVIN GREENBERG,
MAURICE RIND,
LAWRENCE V. BIALEK,
JOHN J. HUGHES, III,
JARROLD R. BACHMANN,
BILLY JOE KNIGHT, and
MICHAEL DUTZAR,

INDICTMENT

76 Cr. 1047

Defendants. :
-----x

COUNTS ONE THROUGH TEN

The Grand Jury charges:

1. From in and around June, 1971 up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, ARNOLD NELSON MAHLER, also known as Arnold Nelson (hereinafter "MAHLER"), DEAN H. UBBEN (hereinafter "UBBEN"), BILLY B. LOVEJOY (hereinafter "LOVEJOY"), MARVIN GREENBERG (hereinafter "GREENBERG"), MAURICE RIND (hereinafter "RIND"), LAWRENCE V. BIALEK (hereinafter "BIALEK"), JOHN J. HUGHES III (hereinafter "HUGHES"), JARROLD R. BACHMANN (hereinafter "BACHMANN"), BILLY JOE KNIGHT (hereinafter "KNIGHT") and MICHAEL DUTZAR (hereinafter "DUTZAR") defendants, together with others (hereinafter "confederates") known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did devise and intend to devise a schema and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, to wit, a securities fraud involving the common stock of a company

Exhibit A

called Industries International, Inc. (hereinafter "Industries International").

Objects of the Fraudulent Scheme

2. The principal object of the scheme was to enrich the defendants and their confederates at the expense of defrauded investors. To this end, the objects of the scheme included, among others:

(a) Creating an illegal market for the sale and distribution of the common stock of Industries International by fraudulent evasion of the federal registration requirements and other federal regulations governing the sale of securities;

(b) Generating an artificial demand for the common stock of Industries International by falsely and fraudulently misrepresenting its financial status and prospects and by falsely and fraudulently touting its common stock;

(c) Rigging and manipulating the sale of the common stock of Industries International, both in the over-the-counter market and in various private and illegal "black markets," through a wide variety of fraudulent and deceptive devices and contrivances, and

(d) Concealing the entire ongoing scheme from the investing public and from government regulatory and investigatory agencies by means of false and misleading statements, false, fraudulent and forged documents, evasions, obstructions, and perjuries.

Means Used To Carry Out The Fraudulent Scheme

3. The means which the defendants and their confederates would and did employ to effectuate their scheme included, among numerous others, the following:

(a) In and around July, 1971, defendant LOVEJOY and certain confederates fraudulently acquired certain licensing rights to a patented pneumatic pump (the "Dri-Flo" pump). Thereafter, having altered the design of the pump beyond recognition or reasonable workability, they fraudulently represented that Industries International (which, under various names, had been nothing more than a machine job-shop in Littleton, Colorado) was capable of manufacturing and selling hundreds of the Dri-Flo pumps at projected annual profits of millions of dollars.

(b) In and around July, 1972, defendant MAHLER (using, here and elsewhere, the alias "Arnold Nelson") and other defendants and confederates fraudulently agreed to acquire control of a dormant "shell" corporation, Bell-Ko Film Corporation (hereinafter "Bell-Ko"), partly by means of fraudulent representations to Bell-Ko's shareholders and partly by secretly agreeing with defendant GREENBERG, who controlled a major block of Bell-Ko stock, to funnel to GREENBERG undisclosed and illegal pay-offs from the proceeds of future sales of Industries International stock.

(c) From in and around November, 1972 up to and including in and around February, 1973, defendants MAHLER, UBBEN, LOVEJOY, GREENBERG, and other defendants and confederates, caused Industries International to fraudulently acquire the assets of Bell-Ko by means of, among other things, fraudulent financial statements prepared by defendant BIALEK, in order to make fraudulent use of the rights enjoyed by Bell-Ko's prior shareholders to trade their stock on the public market.

(d) In and after January, 1973, defendants EARLER, URBEN, LOVEJOY, GREENBERG, and other defendants and confederates, fraudulently evaded the registration requirements of the Securities Act of 1933 by falsely and fraudulently representing (by means of, for example, falsely backdated corporate minutes and fraudulent legal opinions) that both the acquisition of Bell-Ko by Industries International and the subsequent sale on the over-the-counter market of the shares of Industries International exchanged for Bell-Ko's assets, qualified for exemption from such registration.

(e) At all times relevant, defendants URBEN, LOVEJOY, BIALEK, HUGHES, BACHMANN, KNIGHT, and other defendants and confederates, fraudulently stimulated investor interest in Industries International and its stock by such means as making grossly exaggerated representations concerning the qualities of the pump and the capabilities of the company, making false and misleading statements concerning the company's present position and future prospects, issuing false and forged financial statements, making unwarranted and unreasonable predictions and projections concerning the company's future sales and earnings, and making numerous other kinds of fraudulent misrepresentations.

(f) Beginning in and around December, 1972, defendants URBEN, LOVEJOY, HUGHES, BACHMANN, and other defendants and confederates, induced well-known and substantial investors, particularly around the Des Moines, Iowa area, to purchase in private "black markets" large quantities of restricted shares of Industries International issuing directly or

indirectly from the company, by fraudulently promising these victims, among other things, that the proceeds of the sales would be used by Industries International to produce and market the Dri-Flo pump (whereas the bulk of the proceeds actually were funneled, through dummy corporations such as Tina Investment Corp., to the personal benefit of the defendants and their confederates); and, further, they promised these investors that for every two restricted shares of Industries International purchased by said investors they would also receive, at artificial prices and before trading began, one "free and tradeable" share, and that once trading began, the market for the "free and tradeable" shares would rapidly rise, so that the investors could recoup their entire investment from the sale of the "free and tradeable" shares alone.

(g) In and around February, 1973, defendants MAHLER, UBBEN, LOVEJOY, and other defendants and confederates, fraudulently stimulated interest in Industries International stock among brokers in New York, N.Y. by means of misrepresentations concerning the company and its prospects, including, among other things, the distribution of false and forged financial statements.

(h) In and around February, 1973, defendants MAHLER, UBBEN, LOVEJOY, and other defendants and confederates, by such means as undisclosed payoffs and kickbacks, induced the brokerage firm of P.J. Stanton & Co., in New York, New York, to apply for, and, by means of misrepresentations, to receive, permission from the National Quotation Bureau to enter quotations of bids and offers for said securities in the National Quotation Bureau "pink sheets," and thereby help to create a public market for said securities.

(i) In and around February and March, 1973, defendants MAHLER, UBBEN, LOVEJOY, RIND, HUGHES, BACHMANN, KNIGHT, and other defendants and confederates, fraudulently caused the price per share of the stock of Industries International in the over-the-counter market to rise from an original bid of fifty cents (\$0.50) on or about February 27, 1973 to sales at more than six-and-a-half dollars (\$6.50) on or about March 26, 1973 (just prior to the suspension of trading), by such means as fraudulent touting of the stock, manipulation of trades, pegging of prices, and other such devices bearing no honest relationship to the genuine financial condition or business activities of the company.

(j) From in and around November, 1972 up to and including November, 1973, the defendants and their confederates sold to the defrauded public thousands of shares of Industries International, in which shares the defendants and their confederates held a beneficial interest, and realized still further fraudulent windfalls through various artificial, deceptive, and manipulative transactions in the stock undertaken in connection with its price rise. The resulting loss to the investing public was more than \$1,500,000, the bulk of which was realized, directly or indirectly, by the various defendants and their confederates.

(k) In and around the early months of 1973, defendants MAHLER, UBBEN, RIND, HUGHES, BACHMANN, KNIGHT, DUTZAR, and other defendants and confederates, fraudulently concealed their dumping of the stock on the public and their funneling of the proceeds to various defendants and confederates by means of undisclosed purchases, crossed and laundered trades, dummy corporations, and other such fraudulent means.

(l) In and around March, 1973, defendants MAHLER, DUTZAR, and other defendants and confederates, obstructed inquiries undertaken by representatives of the United States Securities and Exchange Commission (hereinafter the "Commission") while the stock of Industries International was still trading, by giving false statements and providing forged and fabricated documents designed to mislead the Commission and to keep the trading in the stock from being suspended and the fraud from being detected.

(m) Around and after the initial suspension of public trading in the stock on or about March 28, 1973, and up to and including the date of the filing of this Indictment, defendants MAHLER, UBBEN, LOVEJOY, GREENBERG, HUGHES, KNIGHT, DUTZAR, and other defendants and confederates, attempted to conceal the fraud already perpetrated and to get the suspension of trading lifted so that the fraud could continue, by, among other means, concocting false statements and alibis to give to the Commission, withholding material facts from the Commission, and in other respects deliberately obstructing the Commission's investigation and the subsequent investigation by this Grand Jury.

(n) In and around April, May, June and July, 1973, throughout which the suspension of public trading in the stock of Industries International continued in force, defendants UBBEN, HUGHES, BACHMANN, and other defendants and confederates, continued to dump still further shares of Industries International stock on defrauded investors through private "black market" sales accompanied by fraudulent representations as to the supposedly imminent lifting of the suspension and as to the supposedly favorable prospects of the company (which shortly thereafter was placed in bankruptcy).

4. Paragraphs 1, 2 and 3 of this Indictment, as set out above, describing the fraudulent scheme, its objects, and its means, are hereby incorporated and realleged in Counts One through Twenty of this Indictment as if set forth fully therein.

Statutory Allegations

5. On or about the dates set forth below, in the Southern District of New York and elsewhere, ARNOLD NELSON MAHLER (also known as Arnold Nelson), DEAN W. UBBEN, BILLY B. LOVEJOY, MARVIN GREENBERG, MAURICE RIND, LAWRENCE V. BIALEK, JOHN J. HUGHES III, JARROLD R. BACHMANN, BILLY JOE KNIGHT, and MICHAEL DUTZAR, defendants, together with confederates known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly, and for the purpose of executing and attempting to execute the fraudulent scheme and artifice set forth in paragraphs 1, 2, and 3 of this Indictment, did cause certain matter to be placed in post offices and authorized depositories for mail matter, to be sent and delivered by the Postal Service and to be delivered according to the directions thereon, in violation of Title 18, United States Code, Sections 1341 and 2; and did cause to be transmitted by means of wire and radio communication in interstate commerce, certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Sections 1343 and 2; all as more particularly set forth below:

COUNT	APPROXIMATE DATE	MATTER IN MAIL OR IN COMMERCE	TITLE 18, UNITED STATES CODE, SECTIONS
1	February 24, 1973	MAHLER caused a letter to be mailed from GREENBERG in California to Harold Herron in New York, N.Y.	1341 and 2

<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>MATTER IN MAIL OR IN COMMERCE</u>	<u>TITLE 18, UNITED STATES CODE, SECTIONS</u>
2	February 28, 1973	UBBEN caused a telephone call to be made from Sullivan, Colorado to P.J. Stanton & Co. in New York, N.Y.	1343 and 2
3	January, 1973	LOVEJOY executed and mailed from Colorado to New York, N.Y., a false and backdated set of minutes	1341 and 2
4	March 2, 1973	GREENBERG made a telephone call to J.R. Potter & Co. in New York, N.Y.	1343 and 2
5	February 28 to March 27, 1973	RIND made telephone calls from New York, N.Y. to HUGHES in Des Moines, Iowa.	1343 and 2
6	February 15, 1973	BIALEK delivered financial statements for mailing from Colorado to New York, N.Y., which were duly mailed.	1341 and 2
7	March 2, 1973	HUGHES caused the Central National Bank & Trust Co. of Des Moines, Iowa to telephone P.J. Stanton & Co. in New York, N.Y.	1343 and 2
8	March 1-8, 1973	BACHMANN made telephone calls from Des Moines, Iowa to P.J. Stanton & Co. and other brokers in New York, N.Y.	1343 and 2
9	March 1-26, 1973	KNIGHT caused R.G. Dickinson & Co. in Des Moines, Iowa to mail confirmations of transactions in Industrial International stock from Des Moines, Iowa to New York, N.Y.	1341 and 2

COUNT	APPROXIMATE DATE	MATTER IN MAIL OR IN COMMERCE	TITLE 18, UNITED STATES CODE, SECTION
10	March 23, 1973	DUTZAR mailed false documents from New Jersey to the United States Securities & Exchange Commission's regional office in New York, N.Y.	1341 and 2

COUNTS ELEVEN THROUGH THIRTEEN

The Grand Jury further charges:

6. From in and around November, 1972 up to and including November, 1973, in the Southern District of New York and elsewhere, ARNOLD NELSON MAHLER (also known as Arnold Nelson), DEAN H. UBBEN, BILLY B. LOVEJOY, MARVIN GREENBERG, MAURICE RIND, JOHN J. HUGHES III, JARROLD R. BACHMANN, BILLY JOE KNIGHT and MICHAEL DUTZAR, defendants, and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly, directly and indirectly, did make use of the means and instruments of transportation and communication in interstate commerce and of the mails as set forth below, to sell, and to offer to sell and offer to buy, through the use of prospectuses and otherwise and by the means set forth in Paragraphs 1, 2 and 3 of this Indictment (which paragraphs are hereby incorporated by reference and realleged as though fully set forth herein), the common stock of Industries International, Inc., there being no registration statement in effect as to such securities and no exemption from registration applicable to such sales.

COUNT	APPROXIMATE DATE	USE OF INTERSTATE COMMERCE OR OF THE MAILE
11	December 18, 1972	UBBEN and LOVEJOY traveled to New York from out-of-state to attend a meeting with MAHLER and others at the office of Harold Herman in New York, N.Y.
12	March 9, 1973	GREENBERG traveled from California to New York, met with MAHLER and others, picked up a \$25,000 check from Foster & Adams in New York, N.Y., and returned to California.

<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>USE OF INTERSTATE COMMERCE OR OF THE MAILS</u>
13	March 1-28, 1973	HUGHES, BACHMANN, and others caused certificates for shares of, and confirmations of transactions in, Industries International common stock to be mailed from New York, N.Y., to Des Moines, Iowa.

(Title 15, United States Code, Sections 77e and 77x;
Title 18, United States Code, Section 2.)

COUNTS FOURTEEN THROUGH SIXTEEN

The Grand Jury further charges:

7. From in and around July, 1972 up to and including November, 1973, in the Southern District of New York and elsewhere, ARNOLD NELSON MAHLER (also known as Arnold Nelson), DEAN H. UBBEN, BILLY B. LOVEJOY, MARVIN GREENBERG, MAURICE RIND, LAWRENCE V. BIALEK, JOHN J. HUGHES III, JAFFOLD R. BACHMANN, BILLY JOE KNIGHT and MICHAEL DUTZAR, defendants, and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly, directly and indirectly, in the offer and sale of the stock of Industries International, Inc., by the use of means and instruments of transportation and communication in interstate commerce and of the mails as set forth below, did employ the artifice and scheme to defraud set forth in Paragraphs 1, 2 and 3 of this Indictment (which paragraphs are hereby incorporated by reference and realleged as though fully set forth herein) in the offer and sale of the stock of Industries International, Inc.

<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>USE OF INTERSTATE COMMERCE OR OF THE MAILS</u>
14	December 8, 1972	MAHLER, UBBEN, LOVEJOY and others caused a fraudulent Notice to Shareholders, containing false financial documents prepared by BIALEK and other fraudulent statements, to be mailed to numerous Bell Co. shareholders in New York, N.Y. and elsewhere.

<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>USE OF INTERSTATE COMMERCE OR OF THE MAILS</u>
15	February 7, 1973	UBBEN, LOVEJOY, and others traveled to New York, N.Y. from out-of-state to attend a meeting with brokers at the Coachman Restaurant in New York, N.Y.
	April 6, 1973	MAHLER and others caused a concealed pay-off in the form of a check for \$30,000 drawn on the account of Jefferson Retroad Manufacturing Company and made out to Edward Currie to be transmitted to UBBEN and others in Colorado, where it was deposited and cleared for payment through the mails through New York, N.Y.

(Title 15, United States Code, Sections 77q(a) and 77x;
Title 18, United States Code, Section 2.)

COUNT SEVENTEEN

The Grand Jury further charges:

8. In and around February and March, 1973, in the Southern District of New York and elsewhere, BILLY JOE KNIGHT and JOHN J. HUGHES III, defendants, and others known and unknown to the Grand Jury, in connection with the purchase and sale of stock of Industries International, Inc., unlawfully, wilfully and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce and the mails, did employ devices, schemes, and artifices to defraud, did make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and did engage in acts, practices and courses of business which operated as a fraud and deceit upon purchasers of securities of Industries International, Inc., to wit, they secretly arranged, prior to the start of public trading of Industries International stock on the over-the-counter market, for P.J. Stanton & Co., a brokerage firm in New York, N.Y., to make available at or near the start of trading a block of 8,000 shares of said stock, at a pre-arranged and artificial price of two dollars per share (\$2.00), to be delivered, as it thereafter was, from New York, N.Y.

the brokerage firm of R.G. Dickinson & Co., in Des Moines, Iowa, for the benefit of KNIGHT and others there, a portion of which block was sold by KNIGHT and another to his own firm's customers and firm's trading account the day after the purchase of said portion, at a profit to KNIGHT of more than 100 per cent, without disclosing the aforesaid material and fraudulent circumstances.

(Title 15, United States Code, Sections 78j(b) and 78ff;
17 C.F.R. 240.10b-5; Title 18, United States Code, Section 2.)

COUNT EIGHTEEN

The Grand Jury further charges:

9. On or about March 21, 1973, in the Southern District of New York, MICHAEL DUTZAR, defendant, unlawfully, wilfully and knowingly, in the matter of Industries International, Inc. under investigation and within the jurisdiction of the United States Securities and Exchange Commission (hereinafter the "Commission"), an agency of the United States, did falsify, conceal, and cover up by trick, scheme and device material facts and did make false and fictitious and fraudulent statements and representations as herein-after underlined.

10. It was material to said investigation for the Commission to ascertain how, at whose behest, and for whose benefit, there had come about certain trades of Industries International, Inc. stock executed by the brokerage firm of Duvest Corporation, of which the defendant MICHAEL DUTZAR was President, for certain accounts in the name of Anted Vending Co., Inc.

11. On March 21, 1973, at 26 Federal Plaza, New York, N.Y., the defendant MICHAEL DUTZAR, accompanied by counsel, having been advised of his rights, and having been advised that the making of knowingly and wilfully false statements to the Commission in this matter could subject him to criminal liability, stated, in response to questions by the Commission, as follows:

"Q. Sir, just looking at the letter that has been marked Division's Exhibit Dutzar 2 for identification, it is on the letterhead of Anted Vending Company, Inc., and it is addressed to yourself from Mr. Michael Sichell, S I C H E L L, and the opening line indicates 'pursuant to our meeting'.

Now, do you recall if the meeting took place?

A. Yes, there was a meeting, at a cocktail party, which took place.

Q. Do you recall when this meeting took place?

A. It was in February. I think it was February or late January. I don't remember the exact date.

Q. And do you know where it was held?

A. I think it was Delmonico's.

* * *

Q. Now, subsequent to this meeting, but prior to the March 2nd trade, did you have any subsequent discussions with, let's begin with Mr. Kulekofsky.

A. No. Not that I recall.

Q. Okay. During the same interval, during the meeting of March 2nd, did you have any conversations with Mr. Zucker?

A. Well, Michael Sichell called me and he told me that, you know, remember meeting him with Ted Zucker and he said he's looking for a block. So I spoke with Mr. Wiener and I said what should I do, you know, this is a shell company that's recently merged, I said, in order to do trades in this, what kind of protection do I need because, you know, whenever you get involved with a shell there's always the possibility of unregistered or something like this coming out.

I've had other companies several times, they involved, whenever you got involved with a shell there's big problems. He told me get a letter from them that they're interested in the stock and that's what I did.

Q. And this is the letter that has been marked Dutzar Exhibit 2 for identification; is that correct, sir?

A. That's right.

Q. I missed that a little bit.

Who was looking for a block, I'm not too clear?

A. Mr. Sichell.

* * *

Q. Did he indicate any reason why he wanted to buy a block of the stock?

A. He told me was very impressed with the company, you know.

Q. Now, were there any other discussions with either Mr. Zucker or Mr. Sichell?

A. Well, you know, he told me he was looking to buy a block and, you know, he called me -- there wasn't anybody in the sheets. I don't remember whether they went in the sheets.

Then when they went in the sheets he called me again, he says check to see if you can get any sizes in the stock. And then March 2nd, I guess was March 1st, late that afternoon he called me and told me see if I can buy up to 40,000. And he said did like a half a dollar for it, see if you get any size at that price. And I called a order in the next morning to my office in Somerville and then later that day I found out that they executed the order.

* * *

Q. Mr. Sichell didn't mention anything about where you could possibly pick up a large block of stock?

A. He just said check these brokers in the sheets.

* * *

Q. Now, the other 35,000 shares were sold also; is that correct?

A. Yes.

Q. Would you describe for me how that came about?

A. This bank came in to us, I don't remember, it's somewhere there.

Q. Would that be the Central National Bank of Des Moines, Iowa?

A. Yes. And they indicated they were looking for a large size of the stock, did I have anything. I said what price are you looking for. They said, well, depending on the size, you know. And I called Mr. Sichell, told him the bank was interested and then, you know, he says, well, call them, you know, I called them and, you know.

That's how it was. They called me, they said they were looking for size. I said hold on, I'll see if I can contact him and I called him and I contacted him. And, you know, he said they were looking for size. He says what price. So then he told me, he says show them what I have, the whole block. And he said they would pay \$2 for the whole block which was a very large block. And I says, okay. And they gave me instructions where to deliver it, you know, deliver it to New York Bank and that was --

* * *

Q. Now, for the second, actually for the original 5,000 share block, you went into the sheets on the ask side only at 5.

How did you arrive at that particular price?

A. The stock was, you know, was running up. He says, well, if you can get 5 for it, ask that price for it. That was, Mr. Sichell's instructions.

* * *

Q. When was this account opened? You got a customer account card?

A. Yes. I can't remember the date. The date was prior to --

Q. In other words, is it --

A. In other words, he gave me the account information, you know, before I did the trade.

Q. Was the account opened in the time period between the due diligence meeting and the first transaction?

A. The first transaction, yes.

Q. Approximately how long before the first transaction was it opened?

A. I don't remember the date.

Q. Was it opened by Mr. Sichell or --

A. Yes.

Q. Representing Anted?

A. Yes.

Q. Who filled out the card and the tickets?

A. I did. And they also sent in a card. We sent them a card and they sent it in."

The above underlined answers, as the defendant DUTZAR then and there well knew, were false.

(Title 18, United States Code, Section 1001.)

COUNT NINETEEN

The Grand Jury further charges:

12. On or about March 23, 1973, in the Southern District of New York, MICHAEL DUTZAR, defendant, unlawfully, wilfully and knowingly, in the matter of Industries International, Inc. under investigation and within the jurisdiction of the United States Securities and Exchange Commission (hereinafter the "Commission"), an agency of the United States, did falsify, conceal, and cover up by trick, scheme and device material facts, did make false and fictitious and fraudulent statements and

representations, and did make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, to wit, he mailed to the Commission at 26 Federal Plaza, New York, N.Y., a letter enclosing a photocopy of what he represented to be the customer data cards filled out upon the opening at his brokerage firm of a new brokerage account by Anted Vending Co., Inc., whereas, as he then and there well knew, the actual such cards filled out upon the opening of said account had been intentionally destroyed and other cards, bearing false and misleading information regarding Anted Vending Co., Inc. and its officers had been substituted following the commencement of the Commission's inquiries, and it was a photocopy of the false, substituted cards that the defendant was enclosing.

13. It was material to the Commission's investigation to ascertain who were the principals and officers of Anted Vending Co., Inc., who had opened the account at the defendant's brokerage firm, who had ordered the trades in the stock of Industries International, Inc., and who had benefitted from said trades.

(Title 18, United States Code, Section 1001.)

COUNT TWENTY

The Grand Jury further charges:

14. From in and around June, 1971 up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, ARNOLD NELSON MAHLER (also known as Arnold Nelson), DEAN H. UBBEN, BILLY B. LOVEJOY, MARVIN GREENBERG, MAURICE RIND, LAWRENCE V. BIALEK, JOHN J. HUGHES III, JARROLD R. BACHMANN, BILLY JOE KNIGHT, and MICHAEL DUTZAR, defendants, together with others (hereinafter "co-conspirators") known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, violations of Title 15, United States Code, Sections 77e, 77q(a), 77x, 78j(b), 78o(c)(1), 78o(c)(2), 78q(a), and 78ff, and violations of Title 18, United States Code, Sections 1001, 1341, 1343, 1503 and 1505.

15. Paragraphs 1, 2 and 3 of this Indictment are hereby incorporated by reference and realleged as though fully set forth herein, as stating the objects of the conspiracy and the means by which the defendants and their co-conspirators carried it out.

Statutory Allegations

16. It was part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, directly and indirectly, would and did make use of the means and instruments of transportation and communication in interstate commerce and of the mails, to sell, and to offer to sell and offer to buy, through the use and medium of prospectuses and otherwise, the common stock of Industries International, Inc., there being no registration statement in effect as to such securities and no exemption from registration applicable to such sales and offers, in violation of Title 18, United States Code, Sections 77e and 77x.

17. It was further part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, directly and indirectly, by use of means and instruments of transportation and communication in interstate commerce and by use of the mails, in the offer and sale of the common stock of Industries International, Inc., would and did (a) employ devices, schemes, and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of the stock of Industries International, Inc., in violation of Title 15, United States Code, Sections 77q(a) and 77x.

18. It was further part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, directly and indirectly, in connection with the purchase and sale of stock of Industries International, Inc., by the use of means and instrumentalities of interstate commerce and of the mails, would and did use and employ deceptive devices and contrivances in contravention of Rule 10b-5 (17 C.F.R. 240.10b-5), a rule prescribed by the United States Securities and Exchange Commission as necessary and appropriate in the public interest and for the protection of investors, in violation of Title 15, United States Code, Section 78j(b) and 78ff.

19. It was further part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, would and did cause brokers and dealers to make use of the mails and of the means and instruments of interstate commerce to effect transactions in, and induce the purchase and sale of, the stock of Industries International, Inc., otherwise than on a national securities exchange, by means of manipulative, deceptive, and other fraudulent devices and contrivances, and in connection with which would and did cause such brokers and dealers to engage in fraudulent, deceptive, and manipulative acts and practices, and to make fictitious quotations, in violation of Title 15, United States Code, Sections 78o(c)(1), 78o(c)(2) and 78ff.

20. It was further part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, would and did cause brokers and dealers registered pursuant to section 15 of the Securities Exchange Act of 1934, as amended, to fail to accurately make, keep,

and preserve for the required periods, the accounts, correspondence, memoranda, papers, books, and others records required by law to be made and kept in connection with transactions in the stock of Industries International, Inc., in that they would and did cause said brokers and dealers to deliberately fail to make certain of said records, to falsify other such records at or after the time of making, and to purposely destroy still other such records, in violation of Title 15, United States Code, Section 78q(a) and 78ff.

21. It was further part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, in matters within the jurisdiction of departments and agencies of the United States, would and did falsify, conceal and cover up by trick, scheme, and device, material facts; make false, fictitious and fraudulent statements and representations; and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries, in violation of Title 18, United States Code, Section 1001.

22. It was further part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, would and did devise schemes and artifices to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing such schemes and artifices, and attempting to do so, would and did knowingly cause mail matter to be delivered according to the directions thereon and knowingly cause signals and sounds to be transmitted by means of wire and radio communication in interstate commerce, in violation of Title 18, United States Code, Sections 1341 and 1343.

23. It was further part of the conspiracy that the defendants and their co-conspirators would and did corruptly endeavor to influence, obstruct, and impede the due and proper administration of the law under which proceedings were being had before departments and agencies of the United States, and to influence, obstruct, and impede the due administration of justice, in violation of Title 18, United States Code, Sections 1503 and 1505.

Overt Acts

24. Each of the allegations contained in the schedules in the previous Counts of this Indictment showing Matters In Mail Or In Commerce (Counts 1-10) and Use Of Interstate Commerce Or Of The Mails (Counts 11-13 and 14-16) are hereby incorporated by reference and realleged as though fully set forth herein, as constituting and describing some of the overt acts by which the defendants committed, in the Southern District of New York, and elsewhere, the offense charged in this Count. In addition, in furtherance of the conspiracy and to effect its objects, the defendants also committed the following additional overt acts, among others, in the Southern District of New York, and elsewhere:

(a) On or about December 18, 1972, various of the defendants and co-conspirators held a meeting at the office of Harold C. Herman, Esq., in New York, N.Y.

(b) On or about February 7, 1973, various of the defendants and co-conspirators held a meeting at the Coachman Restaurant, in New York, N.Y.

(c) On or about March 2, 1973, various of the defendants and co-conspirators held a meeting at the offices of P.J. Stanton & Co., in New York, N.Y.

(d) In and around early May, 1973, various of the defendants and co-conspirators held a meeting at a coffee shop at Kennedy Airport, in Queens, New York.

(Title 18, United States Code, Section 371.)

JOSEPH P. McMORROW
Foreman

ROBERT B. FISKE, JR.
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA :

- v - :

ARNOLD NELSON MAHLER :
(also known as "Arnold Nelson") :
and DEAN H. UBBEN, :

Defendants. :

INDICTMENT

S. 76 Cr. 1047 (MP)

OCT 4 1977

S. D. OF N. Y.

-----x
COUNTS ONE THROUGH TWELVE

The Grand Jury charges:

1. From in and around May, 1972 up to and including around June, 1973, in the Southern District of New York and elsewhere, ARNOLD NELSON MAHLER (also known as "Arnold Nelson" and hereinafter called "MAHLER") and DEAN H. UBBEN (hereinafter called "UBBEN"), the defendants, together with (in alphabetical order) Jarrold R. Bachmann, Edward Currie, Michael Dutzar, Craig Hanson, Harold Herman, John J. Hughes III, Billy B. Lovejoy, Stanley Needleman, David Norblom, Larry Plew, Maurice Rind, William Wellens, and Theodore Zucker (named in related Indictments and Informations as defendants and named here as co-schemers), Louis Kulekofsky (an unindicted co-schemer), and other co-schemers known and unknown to the Grand Jury, unlawfully, wilfully, and knowingly did devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, to wit, a securities fraud scheme involving the fraudulent sale and concealed manipulation of the common stock of a company known as Industries International, Inc. (hereinafter "Industries International").

2. The object of the scheme was to unlawfully enrich MAHLER, UBBEN and their co-schemers through a sophisticated stock swindle which would defraud the public of more than a million dollars.

3. It was part of the scheme that MAHLER and UBBEN and their co-schemers would unlawfully and fraudulently create channels for the public sale of Industries International stock by such means, among others, as:

- bribing brokers;
- preparing false and misleading documents;
- concealing their control of substantial blocks of the stock;
- concealing their roles in the sale of the stock;
- fraudulently touting the stock to groups of stock-brokers and others; and
- falsely evading the federal registration requirements and other federal regulations governing the sale of securities.

4. It was part of the scheme that MAHLER and UBBEN and their co-schemers would generate an artificial demand for Industries International stock by such means, among others, as:

- misrepresenting the company's financial status and prospects through misleading financial statements, projections, and the like;
- concealing the fact that the company was losing money, had little or no net worth, and had a poor sales record;
- promising to deliver to prominent private investors "free and tradeable" shares of Industries International stock without revealing that such stock, which was never in fact delivered, could only have been delivered through the undisclosed and unlawful use of nominees; and,
- misusing the fact that the aforesaid prominent investors had been induced (in various fraudulent ways) to invest in the stock to, in turn, create interest in the stock among other less wealthy investors.

5. It was part of the scheme that MAHLER and UBBEN and their co-schemers would rig and manipulate the sale of Industries International stock, both in the public over-the-counter market and in various private sales, by such means among others, as:

- bribing brokers and arranging for brokers and others to get undisclosed and unlawful kickbacks from the proceeds of their sales of stock;
- arranging for trades of Industries International stock to occur at pre-arranged prices and in pre-arranged, fixed, and rigged ways, rather than, as the law required, according to supply and demand and the independent decisions of investors;
- buying and selling stock, in excess of the legal limits, through the use of nominee accounts; and,
- "freeing-up" for sale, and attempting to free-up for sale, stock properly restricted from sale, by the undisclosed and unlawful use of nominees and the use of unlawfully obtained attorneys' opinion letters.

6. It was part of the scheme that MAHLER and UBBEN and their co-schemers would attempt to conceal the entire ongoing scheme from the investing public and from government investigators by such means, among others, as:

- removing any mention of their names from the publicly available documents relating to Industries International;
- funneling the proceeds of both public and private sales of Industries International stock through various nominee accounts;
- concealing bribes, pay-offs, and divisions of the proceeds of the fraud by a variety of fraudulent contrivances, such as, for example, payments purporting to be for other purposes;
- destroying brokerage account forms and substituting falsified forms in their places; and,
- devising false stories to be told by their co-schemers to government investigators.

STATUTORY AND JURISDICTIONAL ALLEGATIONS

7. On or about the dates set forth below, in the Southern District of New York and elsewhere, ARNOLD NELSON MAHLER (also known as "Arnold Nelson") and DEAN H. UBBEN, the defendants, together with their co-schemers, unlawfully, wilfully, and knowingly, and for the purpose of employing and executing and attempting to execute the fraudulent scheme and artifice set forth above did (a) cause certain matter to be placed in post offices and authorized depositories for mail matter, to be sent and delivered by the Postal Service and to be delivered according to the directions thereon, in violation of Title 18, United States Code, Sections 1341 and 2; (b) cause to be transmitted by means of wire and radio communication in interstate commerce certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Sections 1343 and 2; and (c) use the means and instruments of transportation and communication in interstate commerce in the offer and sale of the stock of Industries International, Inc., in violation of Title 15, United States Code, Sections 77q(a) and 77x and Title 18, United States Code, Section 2; -- all as more particularly set forth below:

<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>JURISDICTIONAL ACT</u>	<u>SECTIONS OF UNITED STATES CODE</u>
1	October 27, 1972	UBBEN travelled from out-of-state to meet with MAHLER and others at a hotel in Manhattan, where they discussed their division of Bell-Ko Film Corporation and Industries International stock.	15 U.S.C. §§ 77q(a), 77x; 18 U.S.C. § 2
2	November 29 - December 5, 1972	UBBEN caused the Beatrice State Bank in Beatrice, Nebraska to wire \$10,500 from his nominee "U.P. Ltd." account to an account of Harold Herman at the National Bank of North America, in Manhattan, the bulk of the proceeds of which were then distributed by Herman to nominee accounts of MAHLER and Zucker.	18 U.S.C. §§ 1343 and 2

COUNT	APPROXIMATE DATE	JURISDICTIONAL ACT	SECTIONS OF UNITED STATES CODE
3	December 8, 1972	Zucker mailed to shareholders of Bell-Ko Film Corporation in New York, N.Y. and elsewhere a proposal for Industries International to acquire Bell-Ko's assets that was prepared by UBBEN and Zucker according to directions and forms supplied by MAHLER, and which concealed MAHLER's and UBBEN's roles in the proposed reorganization.	18 U.S.C. §§ 1341 and 2
4	December 18, 1972	UBBEN travelled from out-of-state to the Bell-Ko shareholders' meeting held at the office of Harold Herman, Esq. in Manhattan which MAHLER, Zucker, and others also attended.	15 U.S.C. §§ 77q(a), 77x; 18 U.S.C. § 2
5	December 26, 1972 - January 9, 1973	UBBEN caused the First National Bank of West Des Moines to wire \$15,000 from the account of Larry J. Dowell to an account of Harold Herman at the National Bank of North America, in Manhattan, the proceeds of which were then distributed by Herman to nominee accounts of MAHLER and Zucker.	18 U.S.C. §§ 1343 and 2
6	January 14-17, 1973	UBBEN travelled from out-of-state to meet with Louis Kulekofsky in Manhattan, to finalize the funneling of a bribe of 50,000 shares of Industries International stock to Kulekofsky and Wellens, as per prior arrangements with MAHLER and Zucker.	15 U.S.C. §§ 77q(a), 77x; 18 U.S.C. § 2
7	February 6-8, 1973	UBBEN travelled from out-of-state to meet with MAHLER and others in a hotel in Manhattan, at which plans were made to provide UBBEN with at least 40,000 additional shares of unrestricted stock at \$1 per share.	15 U.S.C. §§ 77q(a), 77x; 18 U.S.C. § 2
8	February 8, 1973	Herman mailed from Manhattan to Mert Reese in Colorado, with carbon copies to MAHLER and UBBEN, a form opinion letter, to be used by UBBEN in freeing up his 180,000 shares of Bell-Ko Film Corporation stock through the undisclosed use of nominees.	18 U.S.C. §§ 1341 and 2

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<u>COUNT</u>	<u>APPROXIMATE DATE</u>	<u>JURISDICTIONAL ACT</u>	<u>SECTIONS OF UNITED STATES CODE</u>
9	February 14, 1973	Wellens, at the office of P.J. Stanton & Company in Manhattan, called UBBEN, at the apartment of Tina Investment Company in Sullivan, Colorado, to discuss having Lawrence Bialek provide new financial statements for Industries International, so as to enable P.J. Stanton & Company to enter the "pink sheets" for trading of Industries International stock on the over-the-counter market.	18 U.S.C. §§ 1343 and 2
10	March 2-14, 1973	Saxon Securities mailed from Manhattan to MAHLER's corporation, Acquisitions & Investors, Ltd., in Melville, Long Island, confirmations for the sale to P.J. Stanton & Co. of 15,000 shares of the 20,000 shares of Industries International stock held by Saxon Securities on MAHLER's behalf.	18 U.S.C. §§ 1341 and 2
11	March 6, 1973	UBBEN, at the apartment of Tina Investment Company in Colorado, called Louis Kulekofsky, at the office of Lipkin, Gusrae & Held in Manhattan, to discuss further arrangements for the transfer of the 40,000 shares held at Duvest Securities in the Anted Vending nominee account of MAHLER and Zucker.	18 U.S.C. §§ 1343 and 2
12	April 6, 1973	MAHLER and Zucker caused a concealed pay-off in the form of a check for \$30,000 drawn on the account of Jefferson Retread Manufacturing Company and made out to Edward Currie to be transmitted to UBBEN and others in Colorado, where it was deposited in the Tina Investment account controlled by UBBEN and cleared for payment through the mails through New York, N.Y.	18 U.S.C. §§ 1341 and 2

(Title 15, United States Code, §§ 77q(a), 77x; Title 18, United States Code, §§ 1341, 1343, and 2.)

COUNT THIRTEEN

The Grand Jury further charges:

8. From in and around May, 1972 up to and including June, 1973, in the Southern District of New York and elsewhere, ARNOLD NELSON MAHLER (also known as "Arnold Nelson") and DEAN H. UBEN, the defendants, together with others (hereinafter "co-conspirators") known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to commit offenses against the United States, to wit, violations of Title 15, United States Code, Sections 77e, 77q(a), 77x, and of Title 18, United States Code, Sections 1001, 1341 and 1343.

9. Paragraphs 1 through 6 of this Indictment are hereby incorporated by reference and realleged as though fully set forth herein, as stating the objects of the conspiracy and the means by which the defendants and their co-conspirators carried it out.

STATUTORY ALLEGATIONS

10. It was part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, directly and indirectly, would and did make use of the means and instruments of transportation and communication in interstate commerce and of the mails, to sell, and to offer to sell and to offer to buy, through the use and medium of prospectuses and otherwise, the common stock of Industries International, Inc., there being no registration statement in effect as to such securities: -- in violation of Title 18, United States Code, Sections 77e and 77x.

11. It was part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, directly and indirectly, by use of means and instruments of transportation and communication in interstate

commerce and by use of the mails, in the offer and sale of the common stock of Industries International, Inc., would and did (a) employ devices, schemes, and artifices to defraud; (b) obtain money and property by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engage in transactions, practices and courses of business which would and did operate as a fraud and deceit upon the purchasers of the stock of Industries International, Inc.: -- in violation of Title 15, United States Code, Sections 77q(a) and 77x.

12. It was further part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, in matters within the jurisdiction of departments and agencies of the United States, would and did falsify, conceal and cover up by trick, scheme, and device, material facts, make false, fictitious and fraudulent statements and representations, and make and use false writings and documents knowing the same to contain false, fictitious and fraudulent statements and entries: -- in violation of Title 18, United States Code, Section 1001.

13. It was further part of the conspiracy that the defendants and their co-conspirators, unlawfully, wilfully and knowingly, would and did devise schemes and artifices to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing such schemes and artifices, and attempting to do so, would and did knowingly cause mail matter to be delivered according to the directions thereon and knowingly cause signals and sounds to be transmitted by means of wire and radio communication in interstate commerce: -- in violation of Title 18, United States Code, Sections 1341 and 1343.

OVERT ACTS

14. Each of the jurisdictional acts set forth in the schedule at the end of paragraph 7 of the previous Counts of this Indictment are hereby incorporated by reference and realleged as though fully set forth herein, as constituting and describing some of the overt acts by which the defendants committed, in the Southern District of New York and elsewhere, the offense charged in this Count. In addition, in furtherance of the conspiracy and to effect its objects, the defendants also committed the following additional overt acts, among others, in the Southern District of New York, and elsewhere:

(a) On or about March 1, 1973, Edward Tiemers of A.B.S. Transfer Company delivered unlegended certificates for 80,000 shares of Industries International common stock to the office of Harold Herman, Esq. in New York, N.Y., which shares were thereafter sold and resold in the public market and the proceeds divided, directly and indirectly, by MAHLER, UBBEN, Zucker, Kulekofsky, Wellens, and Greenberg.

(b) On or about March 2, 1973, by pre-arrangement between various of the conspirators, 40,000 shares of Industries International stock was sold at 50¢ per share from Marvin Greenberg's account at John R. Potter & Company, in New York, N.Y., to MAHLER's and Zucker's "Anted Vending" account at Duvest Securities in New Jersey.

(c) In and around March 2-8, 1973, 20,000 shares of Industries International stock were sold from MAHLER's "Acquisitions & Investors" account at Saxon Securities, in New York, N.Y., to P.J. Stanton & Company and other brokers, for combined proceeds of more than \$65,000.

(d) On or about March 7, 1973, by pre-arrangement between MAHLER, UBBEN, Kulekofsky, and various other conspirators, 5,000 shares of stock in the "Anted Vending" account at Duvest Securities were sold to Louis Kulekofsky's account at P.J. Stanton & Company in New York, N.Y. at \$3.50 per share

P-23
and the remaining 35,000 shares in the "Anted Vending" account were sold to an account at the Central National Bank in Des Moines, Iowa at \$2 per share.

(e) In and around March 7-12, 1973 MAHLER and Zucker, at MAHLER's office in Long Island, arranged to have a new account form signed by Michael Sichel substituted for the original Anted Vending Company signed by MAHLER and Zucker.

(f) On or about March 13, 1973, MAHLER and Zucker delivered a cash payment to Kulekofsky at MAHLER's office in Melville, Long Island.

(g) On or about April 3, 1973, at MAHLER's office in Melville, Long Island, MAHLER and Zucker agreed to funnel \$30,000 to UBBEN in the form of a check from Jefferson Retread Company to Edward Currie that falsely purported to be for the purchase of HUP stock, and further agreed that Zucker would pay Kulekofsky approximately \$12,000 still owed him and Wellens as their bribes and kickbacks from this stock fraud.

(h) In and around early May, 1973, MAHLER met with Harold Herman and Greenberg at a coffee shop at Kennedy Airport, in Queens, N.Y., to devise a false story for Herman to tell government investigators.

(Title 18, United States Code, Section 371.)

D. C. W. Miles
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

1
2 THE COURT: First-off, as I think was pre-
3 arranged, Juror No. 2 has asked me to call her boss
4 tomorrow morning and explain it is not workable for her
5 to man the telephone after she gets off jury duty, and I
6 take it that I have a consent to that, but if anyone
7 wants to join me in a conference call, I will be glad
8 to have you.

9 Now I know I switched signals on you gentlemen,
10 but there were some other responsibilities that super-
11 vened, and I know Mr. Panzer can bear the later starting
12 hour, and I hope the rest of you can as well, so, I
13 would like to switch what I said to you earlier, and I
14 would like to request that all of you get to the court-
15 room at 9.30 so that you can get organized. Let us
16 plan that I will join you about 9.45, as soon as you are
17 settled, and whatever loose ends we have at that point
18 we will take care of so that we can be ready for the jury
19 at 10.

20 Now I think we ought to stay together for a
21 little while so that I can give you whatever rulings I am
22 ready to give you for your guidance tomorrow, and some of
23 them you may wish to discuss.

24 I have substantially predicted how I would go
25 on the question raised by Mr. Ford concerning the use for

1 impeachment of Mr. Mahler's prior conviction. I have
2 concluded that I will allow it to be used, whatever
3 initial expressions I may have given when the question
4 was first put to me.
5

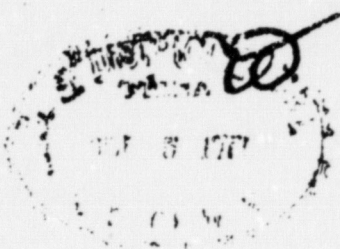
6 First, insofar as there may be - and I am not
7 sure that there is any discretion with respect to
8 calculating the 10 years - I resolve that against the
9 defendant in the light of all the circumstances as they
10 have been explained to me. I don't think, based on what
11 I understand is both the language of the rule and its
12 history, I don't think that I have discretion to decide
13 that the prejudice from this particular conviction will
14 outweigh its relevance so that it should be excluded.
15 But after thinking about it over and over, I think if
16 there is any diycretion, considering the nature of the
17 case and what's been given to me about the character
18 of the proposed proof concerning Mr. Mahler and his life
19 in general, and his activities in particular, whether
20 guilty or innocent, I think I would resolve that too
21 against Mr. Mahler and let this impeaching evidence be
22 used.

23 Now, I have been told, Mr. Ford, by you that
24 Mr. Mahler feels his testimony is so indispensable that
25 no matter how this ruling went he would find it necessary

MEMO. ENDORSED-

- Pollack, J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----	-X	
UNITED STATES OF AMERICA	)	76 Cr 1047 MP
-against-	)	
ARNOLD NELSON MAHLER, ET AL.	)	<u>MOTION TO GRANT AN ORDER</u>
-----	)	<u>PRECLUDING THE GOVERNMENT</u>
	)	<u>FROM INTRODUCING PRIOR</u>
	)	<u>CONVICTIONS ON THEIR</u>
	-X	<u>DIRECT CASE</u>

SIRS:

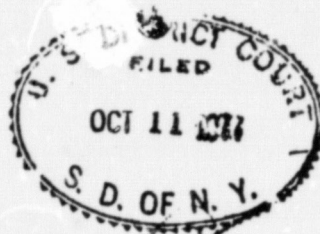
PLEASE TAKE NOTICE, that upon the annexed affidavit of Arnold Nelson Mahler, duly sworn to the 4th. day of October, 1977 the defendant Arnold Nelson Mahler will move pro se before the Honorable Milton Pollack, United States District Judge for the Southern District of New York, said motion to be returnable at a time and on a date to be fixed by the Court, for an order precluding the government from introducing prior convictions on their direct case, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
October 4, 1977

Respectfully submitted,

Arnold Nelson Mahler
11 Ponderosa Drive
Melville, N.Y. 11746
516-367-3154

(82)



USA v. Mahler

76 Cr 1047 (xip)

(Introducing Prior Convictions)

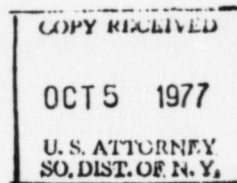
Motion Denied.

The anticipatory motion herein is a) premature and b) wanting in merit at all events. If the facts show prior similar acts, the judgments of conviction are an appropriate means to elicit that evidence.

So Ordered
October 8, 1977

WALTER B. FIRST JR.

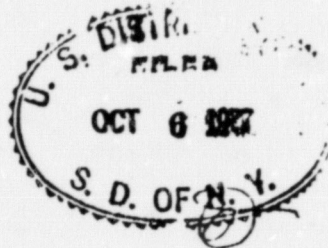
Milton Pelack
USD



MEMO. ENDORSED-

Carb. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
UNITED STATES OF AMERICA)
)
-against-)
)
ARNOLD NELSON MAHLER, ET AL.)
)
-----X

76 Cr. 1047 MP
MOTION TO GRANT AN ORDER
PRECLUDING THE GOVERNMENT
FROM THE USE OF PRIOR
CONVICTIONS FOR IMPEACH-
MENT

SIRS:

PLEASE TAKE NOTICE, that the defendant Arnold Nelson Mahler will move pro se before the Honorable Milton Pollack, United States District Judge for the Southern District of New York, said motion to be returnable at a time and on a date to be fixed by the Court, for an order precluding the government from introducing prior convictions for impeachment.

Dated: New York, New York
October 5, 1977

Respectfully submitted,
Arnold Nelson Mahler
Arnold Nelson Mahler
11 Ponderosa Drive
Melville, N.Y. 11746
516-367-3156

(43)

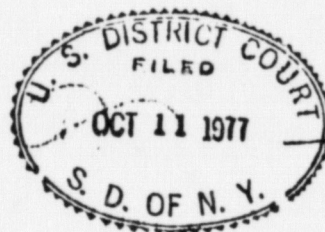
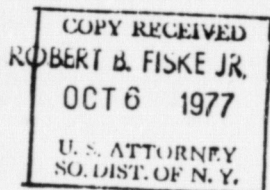
USA v Mahler
(Use of Prior Convictions)

76 Cr. 1047 (nd)

The substance of this
motion was considered
and rejected at the
previous trial and there
are no new facts which
warrant any change
in the ruling.

Motion Denied

So Ordered Milton Pollack
Oct 8, 1977



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA :

- v - :

S. 76 Cr. 1047 (MP)

ARNOLD NELSON MAHLER :

(also known as "Arnold Nelson") :

and DEAN H. UBBEN, :

Defendants. :

- - - - -x

MOTION FOR CONTINUANCE AND
FOR LEAVE TO FILE MOTIONS

Defendant Arnold N. Mahler, respectfully requests a continuance of trial in the above-captioned case, as well as reasonable time within which to file motions. In support of this motion he states:

1. On or about November 19, 1976 a 24-count indictment was returned in Case No. 76 Cr. 1047 naming Arnold Mahler and nine other persons as defendants in an alleged securities fraud and conspiracy. Trial of Defendant Mahler and seven other defendants was commenced before the Honorable Marvin Frankl on April 11, 1977. After more than seven weeks of trial the jury acquitted three of the defendants, but a mistrial was declared as to the remaining defendants following the incapacitation of one of the deliberating jurors. After the case against the remaining defendants was transferred to the Honorable Milton Pollask a new trial date of October 3, 1977 was set.

2. On October 3, 1977 the government and the two remaining defendants appeared before the Court. All parties announced ready for trial. However, since the Court was still engaged in another trial, the case was continued for trial until October 4, 1977.

3. On October 4, 1977 all parties again appeared

before the Court and were ready for trial, but the case was again continued, for the same reason, until October 5, 1977.

4. On October 5, 1977 all parties once more appeared before the Court and announced ready for trial, but the case was once again continued for trial for the same reason, until October 6, 1977. After leaving the courtroom, Mr. Mahler was handed a new indictment (S76Cr.1047) which he was informed would supercede the pending indictment. He was required to appear before a United States Magistrate that morning at which time he was arraigned on the new indictment and entered a plea of not guilty. The new case was thereafter referred to the Honorable Milton Pollack.

5. On October 6, 1977 Mr. Mahler was advised by the Court that he would be required to go to trial immediately on the new indictment, notwithstanding the fact that he had been arraigned only the preceeding day. His application for a continuance was denied, but due to a conflict in the Court's calendar the case was continued for trial on the new indictment until October 11, 1977.

6. Defendant Mahler once again respectfully requests that trial of this matter be continued to enable him to properly consider and timely file appropriate motions and to adequately prepare for trial. Since a new indictment has now been filed,^{1/} he must be given the opportunity provided by the Federal Rules of Criminal Procedure to file appropriate motions. Moreover, as he shall demonstrate, infra, the new indictment charges different substantive offenses and is substantially different from the one it is intended to supercede. Thus fundamental fairness requires that he be given time to prepare for trial on the new indictment.

^{1/} It is unclear to Defendant Mahler whether the old indictment has of yet been dismissed.

7. It is elementary that a newly arraigned defendant must be given a reasonable time within which to file motions, including those attacking the indictment and/or the government's evidence. Thus, for example, Rule 16(f) of the Federal Rules of Criminal Procedure guarantees the defendant at least 10 days after arraignment to file motions under that rule. Indeed, it would be anomalous to deny a defendant a reasonable opportunity after his arraignment within which to file motions since Rule 12(b)(1) declares that "Any defense or objection which is capable of determinatino without the trial of the general issue may be raised before trial by motion," and Rule 12(b)(2) requires that "Defenses and objections based on defects in the institution of the prosecution or in the indictment or information" must be filed by motion before trial or they are waived. See also Rule 7(d), (f).

8. As the United States Court of Appeals for the District of Columbia Circuit has stated: "It has always been the lore, and we hereby expressly declare it to be the law, of this jurisdiction that the defendant has an absolute right to consideration on the merits of objections encompassed by Rule 12. . . ." McGill v. United States, 121 U.S. App. D.C. 179, 181, 348 F.2d 791, 793 (1965). The question presented here is whether this "absolute right" is lost when the indictment to which the defendant has objections is a superceding one. Plainly the answer to that question must be in the negative. The superceding indictment must be considered de novo since it may present different questions than than presented by the indictment it superceded.^{2/} This is especially so where, as

^{2/} By way of example, the manner and timing of the new indictment raise serious questions concerning the use by the prosecutor of the grand jury as a discovery device after an indictment had already been returned, as well as the accuracy of the prosecutor's representations to Judge Frankl in response to motions by the defense before the first trial alleging that
(footnote continued on page 4)

here, the new indictment does more than correct grammar, strike some surplusage and "clean up" loose ends of an old indictment. In the instant case the new indictment makes substantial changes and charges the defendant with different substantive offenses, committed on different dates, by different persons and in a different manner than the preceeding indictment. Even the briefest perusal of the "box-score" sections of the old indictment and the new indictment make that clear. Compare attached Appendix A1 with Appendix A2.

8. The basic principle which Defendant Mahler is advancing herein has recently been recognized by the federal district court in the Eastern District of Virginia in United States v. Paolucci et al., No. 77-175A. In that case the trial court ruled that the filing of a superceding indictment which (unlike the case at bar) merely struck some surplusage and made no substantive changes required the granting of a new period within which to file motions and the continuance of a previously agreed-to trial date. A copy of the transcript of the relevant proceedings in that case is attached hereto as Appendix B.

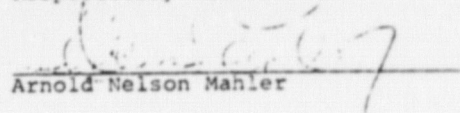
9. Moreover, the particular circumstances surrounding the filing of the new indictment in the instant case make it even more imperative that a continuance be granted. Even assuming arguendo that there was a legitimate need for a superceding indictment, the government procrastinated for approximately four months and then chose to file its new indictment on the third day the case was called for retrial. Prior to his receipt of the new indictment on October 5, 1977, Mr. Mahler had been given

2/ (continued from page 3)
just such a procedure was being followed. Other questions concerning the particular grand jury which returned this new indictment may also be raised. (e.g. if the old grand jury was brought back after its term had expired or after it had been discharged the new indictment would be a nullity; whether the new indictment was tainted by pre-trial publicity, etc.) E.g. see United States v. Fein, 504 F.2d 1170 (2d Cir. 1974)

no inkling. This action of the government, well past the eleventh hour, cannot be permitted to redound to the detriment of Mr. Mahler. The delay which must be occasioned is attributable solely to the government's conduct.

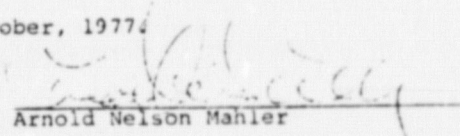
10. Under these circumstances, denial of a continuance to allow Mr. Mahler to consider and file motions and to properly investigate the new allegations would be a violation of due process of law. See Ungar v. Sarafite, 376 U.S. 575, 589 (1964); Shirley v. State of North Carolina, 528 F.2d 819, 822-823 (4th Cir. 1975). Cf. United States v. Bertolotti, 529 F.2d 149, 159 (2d Cir. 1975). Consequently, Defendant Mahler requests a continuance of 30 days.

Respectfully submitted,

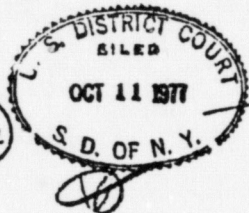

Arnold Nelson Mahler

CERTIFICATE OF SERVICE

I hereby certify that I have personally delivered to the United States Attorney, One St. Andrews Plaza, New York, New York, the foregoing Motion for Continuance and for Leave to File Motions this 7th day of October, 1977.


Arnold Nelson Mahler

MEMO. ENCLOSED



(7) *motion for Continuance*

USA v. Mohler

S. 76. Cr 1047 (trial)

The defendant Mohler has set up a harassing stream - endless - of motions to obstruct the trial of the charges against him. He does this repetitively.

The latest motion for a continuance is a repetition of one denied already.

There is no merit to the present motion.

Denied.

As Ordered

October 8, 1977

Walter P. ...
US DJ

(84)

Realty, 911 Corp., I think Ponderosa Realty.

Q Were there others as well?

A Yes.

Q What about Mr. Zucker, did he have corporate nominee names also?

A Yes.

Q What were some of his?

A Script Equities, Denton Management, Irwin Harris, Paul Bradley. I don't remember the others.

Q And was Mr. Mahler's stock then sold as per that prearrangement?

A The end result was yes, there was some difficulty.

Q What caused that difficulty?

A Originally Saxon Securities was supposed to sell the stock to P.J. Stanton anytime Stanton called up.

In the beginning, whenever Stanton would call up, they refused to sell them the stock unless they discussed it first with Mr. Mahler.

MR. JANIS: Objection, your Honor. This is all hearsay.

THE COURT: Who are you talking about, "they"?

THE WITNESS: Saxon Securities and P.J. Stanton.

THE COURT: Who are Saxon Securities?

1 hpds

Kulekofsky - direct

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2 THE WITNESS: Bernie Herman.

3 THE COURT: Is that one of those within the
4 circle of names?

5 MR. RAKOFF: As an agent, your Honor, he will
6 also be a government witness.

7 THE COURT: I will sustain the objection unless
8 you can show me that that name is part of the first para-
9 graph of the legal paper.

10 Q Did you report these conversations that you
11 had with Mr. Herman to --

12 THE COURT: Did you report the conversation to
13 anyone?

14 THE WITNESS: Yes.

15 THE COURT: To whom?

16 THE WITNESS: Mr. Mahler.

17 THE COURT: What did you report to him?

18 THE WITNESS: That Bernie Herman was not
19 selling the stock to Stanton as he was supposed to.

20 Q What did Mr. Mahler say?

21 A That he would take care of it.

22 Q Did he later indicate that he had?

23 A Yes.

24 Q What were you and Mr. Wellens to receive in
2. connection with this particular block of stock that we have

hobr 14

Kulekofsky-direct

Q And --

A Well, yes, I did.

The first week in April we had an argument concerning the ten or \$12,000 I was still due and Mr. Mahler took the same position, he got in trouble last time for paying off a broker and wasn't going to do it again and Zucker said to me, don't worry, he would honor it. I then met Mr. Zucker the following morning in a diner and received a sum of a thousand dollars in cash at that time.

I then made my wife stop working for Mr. Mahler.

THE COURT: Court's Exhibit 2. The Bruton rule does not apply to a circumstance. Objection overruled.

(Court's Exhibit 2 was marked.)

Q Around May or June were you subpoenaed to testify before the SEC regarding the Industries International case?

A Yes.

Q Did you tell a number of lies there to cover up your involvement?

A Yes.

Q Finally, Mr. Kulekofsky, I would like to offer at this time -- let me rephrase the question.

Did you recently have occasion --

THE COURT: Is this a fair chart of the matters portrayed on it?

THE WITNESS: Are you asking me?

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: How was it prepared?

THE WITNESS: I don't know.

THE COURT: Did you examine the chart after it was prepared?

THE WITNESS: Yes.

THE COURT: Does it fairly reflect the matters contained thereon?

THE WITNESS: Yes.

MR. RAKOFF: I will offer Exhibit 805, your Honor.

THE COURT: Show it to counsel.

MR. RAKOFF: Can we have copies of this, your Honor?

THE COURT: Show it to counsel.

(Handed to counsel)

THE COURT: The chart is Exhibit 805 for identification. Any objection?

MR. JANIS: Your Honor, we object to its

Give him a blank sheet and put them on the boxes not being used at this time.

MR. RAKOFF: He can testify to parts of boxes and not to others.

I really have no objection to the blackboard method if that is preferable.

THE COURT: It just takes longer. That is my objection. You have it all prepared. Why should you go through an exercise in writing it out a second time. Go ahead, do it your way.

MR. RAKOFF: Thank you, your Honor.

THE COURT: I don't think any of us are interested in prolonging this thing indefinitely.

Is there something else you can do now for the next 30 or 35 minutes of this witness and fix this chart up during the recess?

MR. RAKOFF: This bears on his direct testimony.

THE COURT: Go ahead.

MR. RAKOFF: Mr. Kulekofsky, you told us about two blocks of stock and I would like to summarize the two transactions with your help.

First of all, you told us about a block of 20,000 shares of Mr. Mahler's stock that went to Saxon

Securities, is that right?

A Yes.

Q And that was in the name Acquisitions and Investors?

A Yes.

Q And that was really Mr. Mahler's company?

A Yes.

Q And that was then sold to -- supposed to be sold to P.J. Stanton?

A Correct.

Q And was in fact a substantial portion of that sold to P.J. Stanton?

A Yes.

Q And that was a pre-arranged transaction, was it not?

A Yes.

Q And P.J. Stanton then gave checks to Mr. Mahler for the proceeds, is that right?

A No.

Q I am sorry. On the Saxon Securities?

A Yes.

Q That is where it was, up here?

THE COURT: Where what was up here?

Q Where the 20,000 shares of Industries

International stock was located at Saxon and in Mr. Mahler's account in the name Acquisitions and Investors, is that right?

A Yes.

Q It was sold to P.J. Stanton. Was that sold at the market price?

A I presume it was about market price.

Q Did you have occasion to pick up some of the checks and deliver them to Mr. Mahler?

A Yes.

Q And you picked them up at Saxon Securities?

A Yes.

Q And took them out to Long Island?

A Yes.

Q In return for arranging the sale of that stock and also Mr. Zucker's 20,000 you were to get how much?

A Originally it was \$5,000 and then it was changed to some kind of formula based on the proceeds of the sale which ended up being somewhere around 10 or \$12,000.

Q Was that supposed to be essentially anything over \$3 a share?

A Yes.

Q So that if there were \$3 a share and 40,000 shares altogether and you received 10 to 12,000, then

the total proceeds by that formula would have been approximately \$132,000 or thereabouts?

A Yes.

MR. JANIS: Objection. All these questions are leading.

THE COURT: Is there any objection to saying 120 and 12 is 132?

MR. JANIS: I was never good at mathematics.

THE COURT: To that extent we will let him lead. All of us know how to add.

MR. JANIS: My objection is, though, to the form of all these questions. They are all leading.

THE COURT: The foundation for all these questions is already in evidence. There is nothing new that has been asked yet.

MR. JANIS: In that case this chart is unnecessary.

THE COURT: The chart will become very necessary and I don't understand why we can't use it as a summary under the rules of evidence.

Go ahead.

Q And of that amount you got roughly \$12,000?

A 10 or 12, yes.

Q 10 to 12 and you split that with Mr. Wellens?

1 A Yes.

2 Q And that was the undisclosed payment for
3 these transactions -- excuse me -- this would also have inclu-
4 ded 20,000 for Mr. Zucker?

5 A Yes.

6 Q And this is the combined proceeds and the 10
7 or 12 is your cut?

8 A Yes.

9 Q The other block of stock was the 40,000 shares
10 that began in the name of Mr. Greenberg, is that right?

11 A Yes.

12 Q I think you told us that that was first sold to
13 Anted Vending.

14 A Yes.

15 Q On March 2nd, is that right?

16 A Yes.

17 Q That was the day that you had that delivery?

18 A From Walsh Messenger.

19 Q And that was a nominee for both Mahler and
20 Zucker, is that right?

21 A Yes.

22 Q And that was at 50 cents a share, correct?

23 A Yes.

24 Q And that was not the market price?

A No.

Q In fact, it was below the market price?

A Yes.

Q And that also was a pre-arranged transaction?

A Yes.

Q And then from there it was sold in two blocks,
is that right?

A Yes.

Q And one of those blocks was to you at P.J.
Stanton, right?

A Yes.

(Continued on next page.)

Q And that was 5,000 shares?

A Yes.

Q And that had been promised by Mr. Ubben?

A To Bill Wellens, yes.

Q Who then reported to you?

A Yes.

Q And because of the rise in price that was sold at three and a half dollars a share, is that right?

A Yes.

Q And the money to pay for that you got in those two payments from Mr. Mahler and Mr. Zucker?

A Yes.

Q Those were the two deposit slips that we saw earlier in evidence?

A Yes.

Q And you then resold that for approximately 24,000, is that right?

A 25,000, I believe.

Q Did you split that with Mr. Wellens?

A Yes.

THE COURT: With whom?

THE WITNESS: Mr. Wellens.

Q Was that the payoff for arranging this transaction?

MR. BLACKSTONE: Objection.

THE COURT: Sustained.

Q Was that the payment?

A Yes.

Q Was that an undisclosed payment?

A Yes.

Q And then the other 35,000 went to a bank in Des Moines, is that right?

A Yes.

Q And you had discussed on the telephone with Mr. Ubben that being his stock?

A Yes.

Q And that had been originally promised to him at one dollar a share?

A Yes.

Q And because of the rise in market it had to be sold instead at two so there wouldn't be a red flag?

A Yes.

Q Then I think lastly you told us that you learned in April from Mr. Zucker that a check had been sent out of Jefferson Retreat for \$30,000, is that right?

A Yes.

Q And that that check was sent to a connection or nominee of Mr. Ubben in Colorado?

A Yes. I don't know where.

Q A nominee of Mr. Ubben?

A Yes.

MR. RAKOFF: I have no further questions.

MR. BLACKSTONE: Your Honor, I object to the reference that Ubben got --

THE COURT: Are you objecting to the witness' testimony?

MR. BLACKSTONE: No. He didn't testify Ubben got it. He inferred, based on information that he got, that it was delivered to Mr. Ubben.

THE COURT: Clear that up, Mr. Rakoff.

BY MR. RAKOFF:

Q You were told by Mr. Zucker what about \$30,000 check?

A It was being made out to a fellow by the name of Larry Plew but it was for the benefit of Mr. Ubben.

Q So I will put a parenthesis around Mr. Ubben to show it was not in his name but simply for his benefit.

MR. BLACKSTONE: Your Honor, I would have no objection if the government used its original box in place of that because the original, which ultimately I understand it intends to introduce, reflects the fact of it going to Tina Investment Company. It is more accurate.

office, isn't that correct?

A Yes. He with Norma Leahy.

Q At times in Mr. Mahler's absence, you would come by and drop off your current wife and you would meet and discuss things with Mr. Zucker, is that correct?

A Yes.

Q Mr. Kulekofsky, the arrangements that you made with the government, or the deal we discussed earlier, you were made to suffer a 5-year probationary period, isn't that right?

A I don't consider the word "suffer."

Q Do you consider it to be punishment, sir?

A It was an admission on my part that I did something wrong. It was an acknowledgement and it was a way of alerting the SEC that if I ever went back into the brokerage business I did something wrong at one time in my life.

Q Indictment is a way of alerting a man of his wrongdoing, is that right?

A Yes.

Q Prosecution is alerting a man of his wrongdoing, isn't it?

A Yes.

Q Incarceration is a way of identifying to a

man that he has committed an illegal act, isn't it?

MR. RAKOFF: Objection, your Honor.

THE COURT: I think we have gone far enough on this. Death, I suppose, is another way.

Q Probation is what you received here, is that right?

THE COURT: I think you've gone far enough on this.

MR. SHARP: May I inquire about the dates of probation, your Honor? I would like to inquire about the dates of probation and then I'll drop this particular aspect of it.

MR. RAKOFF: Your Honor, I think "probation" is an incorrect term. I assume you are referring to the letter filed with the SEC.

MR. SHARP: I am concerned with the barring of the five years of this man.

THE COURT: That is not probation. Probation is a term of art which means something entirely different.

Q Let me rephrase the question and I will correct myself.

Have you been barred for five years from engaging in a certain activity?

A The agreement calls for a period of five years,

1 hpds 10 Kulekofsky - cross 225

2 Q He was a friend of yours?

3 A Yes, sir.

4 Q Of longstanding?

5 A No.

6 Q How long had you known him?

7 A I guess I met him about the summer of '71.

8 Q Did you mention his name to Mr. Zucker?

9 A Yes.

10 Q At the meeting where he offered you the

11 \$1000?

12 A I don't recall if that was the occasion that

13 I mentioned it.

14 Q You made a deal, you say, with Mr. Wellens

15 where in fact you would give him one half of the thousand

16 dollars provided he would accommodate you and go to the

17 sheets at the appropriate time, isn't that right?

18 A Yes.

19 Q You did not tell the Securities & Exchange

20 Commission that in June of 1973, did you?

21 A No, I did not.

22 Q You lied about it, didn't you?

23 A I have already admitted I perjured myself.

24 THE COURT: We have had that now five, six,

25 seven or eight times. I don't think we should have

2 unnecessary repetition.

3 MR. SHARP: Your Honor, I'm getting --

4 THE COURT: I know what you are getting at.

5 I am suggesting I don't want this unnecessary duplication
6 which is merely in the form of summation and the eliciting
7 of evidence.

8 Q I believe you indicated you later acquired
9 notice of special meeting of shareholders, I believe
10 Exhibit 37, which was identified and shown to you in the
11 course of your direct. Do you recall that?

12 A What are you talking about?

13 MR. RAKOFF: There was no 37.

14 Q Exhibit 39.

15 A Are you talking about HUP or --

16 Q HUP.

17 A Yes.

18 Q Who gave you that, sir?

19 A Mr. Zucker.

20 Q Who prepared that?

21 A Either Mr. Zucker or Mr. Mahler.

22 Q You don't know who prepared it?

23 A No.

24 Q Mr. Zucker is the one who gave it to you,
25 is that right?

1 gwds

Wellens - direct

278

2 the stock.

3 Q In order to start trading such stock, ~~you~~
4 would have to have a broker listed in the pink sheets?

5 A Yes.

6 Q What did you say in response to Mr. Kulekofsky's
7 request to you to go into the pink sheets?

8 A I told him I would have to check with Maurice,
9 Stanley and Pete Aiello.

10 Q Did you also tell him in order to go into the
11 pink sheets P.J. Stanton would want a payment.

12 MR. BLACKSTONE: Objection; leading.

13 THE COURT: Did you discuss any payment to
14 P.J. Stanton for any reason?

15 THE WITNESS: Yes, I did.

16 THE COURT: What was that?

17 THE WITNESS: I told him that if somebody asked
18 me to go on the sheets and trade a stock, and we talked about
19 how much money we could get for trading the stock and going
20 on the pink sheets.

21 Q Did Mr. Kulekofsky give you any written
22 material on HUP?

23 A He gave me a notice to shareholders.

24 Q And did he tell you that HUP was a shell?

25 A Yes, he did.

1 qwds Wellens - direct 280
2 into the pink sheets on HUP, did Mr. Kulekofsky introduce
3 you to anybody?

4 A Repeat that question. I am sorry.

5 Q Did Mr. Kulekofsky introduce you to anyone in
6 connection with getting HUP into the pink sheets?

7 A He introduced me to Ed Horton, who was the
8 president of HUP Industries.

9 Q And is Mr. Horton presently deceased?

10 A Yes.

11 Q Did you have a conversation at that time with
12 Mr. Ed Horton?

13 A Yes. I told him --

14 Q After your conversation with Mr. Horton, did
15 you discuss HUP with P.J. Stanton?

16 A Yes, I told Maurice and Stanley and Pete Aiello
17 we could get 5000 shares of free stock.

18 THE COURT: Of what company?

19 THE WITNESS: Of HUP Industries. And I told
20 them I wanted half of the stock that we got.

21 Q Was this 5000 shares a payment to you for
22 going into the pink sheets?

23 A Yes, it was.

24 Q And did you know at that time that it was not
25 legal for a broker to take a payment to go into the pink

1 A Yes, Stanley Needleman came to me and told me--

2
3 MR. JANIS: Objection, your Honor.

4 THE COURT: Sustained.

5 You had a conversation with Needleman. As
6 a result of that conversation what, if anything, occurred?

7 THE WITNESS: Stanley Needleman told me --

8 THE COURT: You can't recite what he told you
9 but you can now state what, if anything, occurred after the
10 conversation was had.

11 THE WITNESS: The National Quotation Bureau
12 rejected the original application.

13 Q And did you have a conversation with Mr. Ubben
14 in which you related to him what Mr. Needleman told you?

15 A I called up Dean Ubben and told him that the
16 National Quotation Bureau rejected the application and he
17 told me to call up Bialek who was the accountant and he
18 will straighten it out.

19 Q Did Mr. Ubben give you Mr. Bialek's telephone
20 number?

21 A Yes, he did.

22 Q What did you do then?

23 A I gave it to Stanley Needleman and Stanley
24 called up Bialek on the telephone and Bialek told him --

25 MR. JANIS: Objection, your Honor.

2 THE COURT: All right.

3 Af Bialek was communicated with, what, if
4 anything, occu

5 THE WITNESS: Well, we received adjusted
6 financials in the mail.

7 THE COURT: Had you talked about any adjusted
8 financials with Ubben?

9 THE WITNESS: Yes, I did, on the telephone.

10 THE COURT: And what did you tell him about
11 that?

12 THE WITNESS: I told him the financials were
13 rejected and will he straighten it out, what can he do about
14 it and he said he'll call the accountant.

15 THE COURT: When you refer to the financials,
16 explain what you mean and also explain what you mean when
17 you say rejected.

18 THE WITNESS: Well, there was an error in the
19 balance sheets and I don't remember exactly --

20 THE COURT: I want to know what you told Ubben,
21 not what you know. What, if anything, did you tell Ubben?

22 THE WITNESS: I told him that the National
23 Quotation Bureau sent back the application and rejected it
24 and they said there was an error with the balance sheet.

25 THE COURT: Then, after the Needleman talk,

what, if anything, happened?

THE WITNESS: He called up the accountant and the accountant told him --

THE COURT: You can't say what the accountant told him. What happened?

THE WITNESS: We received a new balance sheet in the mail.

Q That was received at P.J. Stanton?

A Yes.

Q Was a new application filed with the National Quotation Bureau to again go into the pink sheets?

A Yes.

Q Did there come a time when, in fact, P.J. Stanton went into the pink sheets in Industries International?

A We went in February 28, 1973.

Q Prior to the start of trading of Industries International stock, did you have a conversation with Mr. Kulekofsky about a block of stock that belonged to a Mr. Greenberg?

A Yes. Lou came to me and asked me if I knew a broker that would go on the pink sheets and he told me that DuVest would come and buy the stock at half a dollar a share.

Q He told you it was a prearranged sale on one end and he needed you to set up a broker on the other end?

MR. JANIS: Objection.

THE COURT: Sustained.

Was the transaction arranged in advance by anybody?

THE WITNESS: Yes, it was.

THE COURT: How was it arranged?

THE WITNESS: We just delivered the stock over to the broker and we told him who the broker was that was going to buy the stock from him and to sell the whole block of 40,000 shares at one time.

THE COURT: Was price mentioned?

THE WITNESS: Yes, a half a dollar a share.

THE COURT: Was that pursuant to any prior arrangement?

THE WITNESS: Yes, it was.

THE COURT: Between whom and whom?

THE WITNESS: I called up the broker and I told him -- Lou came to me originally and told me Marty Greenberg, the president of Bell-Ko was going to sell the stock to Arnie Nelson and Teddy Zucker and in order for him to do this, they had to have a prearranged sale without anybody knowing about it. So, Lou asked me to get him a broker and I called up Potter and I asked him to go on the sheets for us and he will earn the commissions and all he

had to do was sell it to another broker.

THE COURT: For what reason was it necessary to have a prearranged sale so that Greenberg could sell his stock?

THE WITNESS: The stock was unregistered and by selling it without being prearranged, it would free up the stock. It would be clean stock.

MR. JANIS: Your Honor, I object to that. I ask that answer be stricken. I think as a matter of law it's incorrect.

THE COURT: As a matter of law, you can argue law at a different time, but that's this witness' testimony.

Go ahead, Miss Chepica.

Q After your conversation with Kulekofsky, did you in fact physically go to the offices of John Potter?

A Yes, I did.

Q And did you explain to him the substance of your conversation with Mr. Kulekofsky?

A Yes, I told him what he had to do.

Q And did he agree to do this?

A Yes, he did.

Q On the first day of trading, which I believe you testified was February 28th, did you call Mr. Potter on the telephone?

1 hpbr 10

B.Herman-direct

2 THE COURT: Following that conversation,
3 what if anything occurred? Omit the conversation. Just
4 tell us what occurred as the result of the conversation.

5 THE WITNESS: I had the firm mail some forms to
6 Mr. Arnold Nelson.

7 Q Was that a name that had been given to you by
8 your brother?

9 A Yes.

10 Q Can you describe the forms that you sent to
11 Mr. Arnold Nelson?

12 A Primarily it was a customer's new account card.

13 Q Was there the form that had to be filed with
14 Saxon Securities to open a new account?

15 A Yes.

16 Q Was this card filled out and returned to
17 Saxon Securities?

18 A Yes.

19 Q Was an account opened?

20 A Yes.

21 Q Could you tell us in what name that account
22 was opened?

23 A Acquisitions & Investors Corporation,
24 I think it was.

25 Q In addition to receiving from Mr. Nelson the

1 hpbr 11

B.Herman-direct

2 new account card filled in did you receive a corporate
3 resolution?

4 A Yes.

5 MR. JANIS: Objection, your Honor.

6 THE COURT: I will overrule that objection.

7 Did you receive any papers?

8 MR. JANIS: Your Honor, she stated from whom
9 it was. The question assumed a fact not in evidence.

10 THE COURT: I didn't ask that at all. I said
11 "Did you receive any papers"?

12 THE WITNESS: Yes.

13 Q Let me show you what has been marked as
14 Government Exhibit 284. Is this a form that was received
15 by Saxon Securities?

16 A Yes.

17 Q And from whom did you receive it?

18 A Mr. Nelson.

19 MS. CHEPIGA: Your Honor, if I may read it to
20 the jury.

21 THE COURT: Do you want to introduce it in
22 evidence?

23 MS. CHEPIGA: I offer it.

24 MR. JANIS: No objection.

25 MR. SHARP: No objection.

1 hpbr 16

B.Herman-direct

2 time given the name of Joel Jablons who would actually
3 be handling the transaction, selling of the stock so in
4 my absence if he wanted information he could always obtain
5 it from Mr. Jablons.

6 THE COURT: Is that the only thing that
7 happened?

8 THE WITNESS: That was part of the conversa-
9 tion.

10 THE COURT: Get down to business. Was
11 anything else said?

12 THE WITNESS: I also started to give him
13 information as to the various contracts that had apparently
14 been consummated in my absence.

15 THE COURT: What do you mean by consummated
16 contracts?

17 THE WITNESS: Trades that had taken place
18 at the trading desk between our house and other --

19 THE COURT: You mean stock was sold by your
20 firm?

21 THE WITNESS: Contracted to be sold.

22 THE COURT: You had arranged with somebody
23 else to buy the stock from your firm and you gave them a
24 report of those transactions?

25 THE WITNESS: That's correct.

1 hpbr 17

B.Herman-direct

2 Q Did he give you any instructions on how to sell
3 the stock?

4 Q He wanted us to expedite the selling of these
5 shares of stock.

6 Q He wanted you to sell it quickly?

7 A As quickly as we could.

8 Q Let me show you what has been marked as
9 Government Exhibit 284-C. Could you identify those, Mr.
10 Herman?

11 A Yes. These are copies of sale tickets as
12 provided by our traders. Whenever a contract was
13 struck at the desk to sell shares of stock the trader would
14 enter the name of the brokerage house that it was being sold
15 to, identify the stock itself, the number of shares, the
16 price and the date.

17 MR. CHEPIGA: The government offers 284-C.

18 MR. JANIS: No objection.

19 THE COURT: Those were traders' transaction
20 tickets.

21 THE WITNESS: That's correct.

22 THE COURT: Of the transactions that took place
23 in the stock for Acquisition & Investors Limited that you
24 had reported on to Mr. Nelson on the telephone.

25 THE WITNESS: That's correct.

1 hpbr 19

B.Herman-direct

2 1973 was?

3 A I believe it was a Friday.

4 Q Looking at those sales tickets, on Monday,
5 March 5, 1973, were there any further sales of the
6 Acquisition & Investors stock?

7 A Yes.

8 Q How much was that and at what price?

9 A 3,000 shares at \$4.

10 Q Was that also sold to P.J. Stanton?

11 A Yes.

12 Q On March 8th did you have several shares
13 of Acquisitions & Investors Industries International
14 stock?

15 A Yes.

16 THE COURT: You mean you had stock that had
17 not been sold on March 8th?

18 THE WITNESS: If I may judge, I believe that
19 the question she meant to ask, were there additional sales
20 that took place on March 8th.

21 THE COURT: There were additional transactions
22 on March 8th?

23 THE WITNESS: The answer would be yes.

24 THE COURT: For this account?

25 THE WITNESS: For this account in the shares

1 hpbr 20 B.Herman-direct

2 of Industries International.

3 Q Mr. Herman, I show you Government Exhibit 284-D.

4 Can you identify that document?

5 A Yes.

6 Q What is that?

7 A It is the ledger account card covering the
8 customer, Acquisitions & Investors.

9 Q By looking at that can you tell us how many
10 shares of stock of Industries International stock was received
11 by Saxon Securities from Acquisitions & Investors?

12 A Yes.

13 Q How much was that?

14 A 20,000 shares.

15 Q And all of this was sold within what period
16 of time?

17 A Just about a week.

18 THE COURT: What is the money balance there
19 for sales? Does it show on the balance sheet?

20 THE WITNESS: Yes, it does.

21 THE COURT: What was the money that was re-
22 ceived on that?

23 THE WITNESS: The total sum?

24 THE COURT: Yes.

25 THE WITNESS: Somewhat over \$64,000.

1 hpbr 21

B.Herman-direct

2 THE COURT: Is there anything on the account
3 that shoes a check?

4 THE WITNESS: Yes. I am looking at the --

5 THE COURT: What is the amount of the check?

6 THE WITNESS: There were three checks
7 that were issued.

8 THE COURT: What were the three checks and in
9 what amounts?

10 THE WITNESS: One check, No. 1214, in the sum
11 of \$31,005. Check No. 1226 in the amount of \$11,654.50.
12 Finally check 1247 in the amount of \$22,298.49.

13 (Pause.)

14 MR. RAKOFF: Your Honor, I get approximately
15 65,000.

16 BY MS. CHEPIGA:

17 Q \$64,957.99, is that correct?

18 A Yes.

19 Q To whom were these checks sent?

20 A These checks were sent to Acquisitions and
21 Investors.

22 MS. CHEPIGA: The government offers 284-D for
23 identification.

24 MR. JANIS: No objection.

25 (Government Exhibit 284-D was received in

1 hpbr 22

B.Herman-direct

2 evidence.)

3 THE COURT: Mrs. Chepiga, that should be cor-
4 rected to 64,957, not 967.

5 MS. CHEPIGA: You are right, your Honor, I am
6 sorry.

7 Q Mr. Herman, I show you what has been marked
8 as Government Exhibit 284-E-1, 284-E-2 and 284-E-3. Could
9 you identify those documents for the ladies and gentlemen
10 of the jury?

11 A These were checks issued by Saxon Securities
12 on securities in payment, in settlement, payment of funds
13 to the customer.

14 Q And these checks were sent to Acquisitions &
15 Investors?

16 A That is correct.

17 Q And they were sent in the mail?

18 A I believe one of them was picked up. I don't
19 recall which one.

20 Q Referring back to Government --

21 THE COURT: What about the other two? Were
22 they mailed in the regular course?

23 THE WITNESS: I have no other recollection and
24 I would assume that it was mailed in the regular course of
25 business.

1 hpbr 23

B.Herman-direct

2 Q Directing your attention to the sales tickets
3 that were marked as Government's Exhibit 284-C, could you
4 explain to us the procedure by which the customer would be
5 notified a sale was made?

6 A Sure. The customer --

7 THE COURT: Do you send out confirmations of the
8 transactions?

9 THE WITNESS: Yes.

10 THE COURT: Did you send out confirmations here?

11 THE WITNESS: In the normal course of business,
12 yes.

13 THE COURT: Have you got the confirmations in
14 front of you?

15 THE WITNESS: No, I do not.

16 Q But it was your normal practice to send out
17 through the mail confirmation of the sale?

18 A That is correct.

19 MS. CHEPIGA: I have no further questions of
20 Mr. Herman.

21 I offer Government Exhibit 284-E-1, 2 and 3
22 for identification.

23 THE COURT: Received without objection.

24 (Government's Exhibits 284 E-1, 284 E-2 and
25 284 E-3 were received in evidence.)

1 A It may have been delivered to Mr. Jablons.
2
3 It may have gone to the transfer agent. I have no direct
4 knowledge on this point.

5 Q Mr. Herman, when the stock came to Saxon
6 Securites, who would have dealt with it?

7 A The cashier and Mr. Jablons.

8 Q Who was Mr. Jablons?

9 A He was the president of Saxon Securities.

10 Q Am I correct in stating, sir, when the stock
11 certificates came into Mr. Jablons and the cashier, it was
12 their duty to make sure everything was done properly, to
13 look over the certificates and before sending the information
14 on to the transfer agent, to insure everything was done in
15 accordance with law, is that correct, sir?

16 A Absolutely correct.

17 Q To the best of your knowledge, Mr. Jablons
18 and the cashier did take such actions, is that right?

19 THE COURT: He just got through telling you
20 a half a dozen times he doesn't know. What's the use of
21 asking questions of this kind?

22 Q Did you speak to Mr. Jablons or the cashier
23 about that?

24 A Yes.

25 Q Did they tell you that they had taken those

1 hpds

B. Herman - cross

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2 were sent on to the transfer agent.

3 Q Did that also include an opinion letter?

4 A I can't answer that. I did not handle that.

5 If required, perhaps.

6 Q You have no information about an opinion
7 letter from your brother, sent on with the material?

8 A By whom?

9 Q After it had been sent to Saxon Securities.

10 A Counselor, it is my understanding that the
11 opinion letter was sent directly to the transfer agent by
12 the attorney for the firm.

13 Q Who was your attorney?

14 A Harold Herman.

15 Q He was your brother, is that correct?

16 A Yes, still is.

17 Q He still is. I'm glad that's true.

18 THE COURT: I don't think that's necessary.

19 I don't want any comments.

20 Q Mr. Herman, you knew, in fact, that your
21 brother had sent a letter either directly or indirectly to
22 the transfer agent stating that these shares of stock
23 qualified for an exemption under Rule 133, is that right,
24 sir?

25 A I've been informed by him that such letter was

THE COURT: Sustained.

Did the shareholders' list indicate ownership of a controlling interest by either Mr. Mahler or Mr. Zucker or anyone else you can identify?

THE WITNESS: No, not that I recall.

Q Directing your attention to January and February of 1973, were you asked by Mr. Nelson Mahler to free up some of his restricted stock?

MR. JANIS: Objection, your Honor.

THE COURT: Sustained.

Did you have a conversation with Mr. Nelson or Mr. Mahler, however you refer to him, in connection with restricted stock in January or February of 1973?

THE WITNESS: Yes.

THE COURT: What was the conversation and with whom did you have it?

THE WITNESS: Mr. Nelson Mahler told me that he thought --

MR. JANIS: Objection, your Honor. The same objection.

THE COURT: I am receiving this -- I don't know what you mean when you say same objection. I am taking your objections only as they are made. I am receiving

1 gwbr 15

H.Herman-direct

2 this subject to connection.

3 You may answer this question.

4 THE WITNESS: Mr. Nelson Mahler told me that he
5 thought Rule 133-D applied to shares that he and Mr. Zucker
6 owned and he asked me to look into the applicability of that
7 rule, to check it out, and that --

8 THE COURT: Did you finish your answer?

9 THE WITNESS: I wanted just to say that that
10 rule related to freeing up shares.

11 (Continued on next page.)

1 gwds 1 H. Herman - direct 379

Mahler 2 Q Did he discuss with you compensation that
3 you would receive --

tk2B 4 THE COURT: Was there any discussion with
am 5 you about the subject?

6 Don't lead the witness now.

7 MR. RAKOFF: The only reason I am doing it is
8 to try to avoid --

9 THE COURT: There is no reason for you to do
10 it.

11 Q Was the subject of compensation --

12 THE COURT: Was the subject of compensation
13 discussed?

14 THE WITNESS: Yes.

15 THE COURT: What was the conversation?

16 THE WITNESS: He informed me that he would be
17 happy and that the custom was to pay to the attorney 10 per-
18 cent of the proceeds realized from the sale of the stock
19 and the attorney's opinion relating to it.

20 Q Jumping ahead for a moment, did you ultimately
21 write an opinion letter freeing up the stock for Mr. Mahler?

22 A I believe it was his corporation and Mr. Zucker
23 corporation together.

24 THE COURT: What is your answer?

25 THE WITNESS: Yes, but not in their names.

THE COURT: You wrote an opinion letter under Rule 133(d) for two corporations?

THE WITNESS: Yes.

THE COURT: Who were the owners of the stock?

THE WITNESS: Yes.

THE COURT: Owners of what stock?

THE WITNESS: Stock of Industries International.

THE COURT: What did you do with the opinion letter or letters?

THE WITNESS: I handed them to the transfer agent.

Q Did those letters disclose the compensation you were receiving?

A No, sir.

Q Did Mr. Nelson Mahler -- did you have a conversation with Mr. Nelson Mahler about freeing up stock for anyone else?

A Yes.

Q And what was that conversation?

A He asked me to write an opinion for Mr. Greenberg also restricted to 1 percent of the shares outstanding in accordance with Rule 133(d).

Q That would be 40,000 shares?

A Yes.

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THE WITNESS: The conversation was he asked me if I would mind handling an opinion for either Mr. Ubben or some associate of Mr. Ubben in the Midwest, and I told him I would not want to get involved.

Q Did he then ask you to do anything further?

A He then asked me if I wouldn't mind sending information about 133(d) to Mr. Reese, an attorney for Mr. Ubben in the Midwest, so Mr. Reese could consider giving the opinion at some time in the future.

Q And did you do that?

A Yes. I wrote Mr. Reese. I sent a copy of the letter to Mr. Ubben and to Mr. Nelson Mahler.

Q Incidentally, did those letters all go through the mail?

A Yes.

Q And I show you Government Exhibit 356 in evidence. Is that the letter you just have been referring to?

A Yes.

Q Is that essentially a form for a 133(d) opinion?

A Yes, it is the format.

THE COURT: The purpose of this kind of form is to give certain information to the transfer agent on the

2 basis of which the transfer agent would free-up the stock
3 and remove a legend and allow the stock to be issued in
4 freely tradable form, is that right?

5 THE WITNESS: In part. The balance of it is
6 it puts in the opinion letter the restrictions of the rule.
7 There are three restrictions in the rule, and the thing is
8 to point out to the company or the individual those restric-
9 tions. The opinion could be one sentence, but the major
10 point is to put in the rule.

11 THE COURT: The purpose of the opinion letter
12 is to free-up restricted stock?

13 THE WITNESS: Yes.

14 THE COURT: And that is what you were asked
15 to do for compensation, 10 percent of the proceeds of the
16 stock, is that right?

17 THE WITNESS: Yes, whatever was sold.

18 THE COURT: Do you have any idea what those
19 proceeds would be?

20 THE WITNESS: No, sir.

21 THE COURT: Or what 10 percent would amount
22 to as a fee to you?

23 THE WITNESS: Well, I didn't have any idea
24 at the time that I was working.

25 THE COURT: Did you discuss whether it was going

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gwds

H. Herman - direct

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to be a \$10 opinion letter or a larger amount?

THE WITNESS: The stock, I believe, wasn't even trading at the time I was working on it.

THE COURT: What did you think the 10 percent referred to as a result of your conversation?

THE WITNESS: I can try to reconstruct. I don't really remember. If you want me to hazard a guess, I will do it.

THE COURT: I don't want you to do any guessing.

BY MR. RAKOFF:

Q How much, Mr. Herman, did you get from that 10 percent?

A \$12,000.

Q And that compared with \$2000 that you were receiving for all the other work you did on Industries International?

2000, 2500.

Q Going back to that letter you sent to Mr. Reese with the copies to Mr. Ubben and Mr. Nelson, I show you Government Exhibit 622-E in evidence, and that purports to be on its face six opinion letters from a Mr. M. Reese freeing up stock under Rule 133(d), is that correct?

A Yes.

MR. RAKOFF: It is 729.

(Handed.)

Q Let me give you what has been marked 729 in evidence, I believe. The cover letter on that indicates this was sent, copy was sent to Mr. Zucker, is that correct?

A Yes, sir.

Q On the first page of the actual minutes there --

A If I could just inject this. I signed this letter "Hal" also, and I recognize this signature as Hal. It is different than the other one.

Q You consider the other one to be a forgery, is that correct?

A I'm not positive. It doesn't look to be my signature.

Q The letter to Mr. Zucker with a copy to Mr. Kulekofsky is the one that you are not sure of?

A Yes.

Q On the first page there, those identified as being in attendance include Arnold Nelson, isn't that correct?

A Yes.

Q Did it ever come to your attention that Mr. Mahler's name is Arnold Nelson Mahler?

A Yes, I was so informed.

1 hpbr 3

H.Herman-cross

2 THE COURT: When?

3 THE WITNESS: Months after this by members of
4 the staff of the Securities and Exchange Commission.

5 THE COURT: You didn't know that at the time
6 of these trasnactions?

7 THE WITNESS: No, sir.

8 Q And that his middle name is Nelson, is that
9 right, Arnold Nelson Mahler?

10 A I found out later on. If you will turn to
11 Page 3 of that document for a minute, please, and look at
12 the third paragraph from the top -- the second paragraph.
13 Will you review that quickly, please.

14 A Is that starting with Alan Drezin?

15 Q That's correct, sir. He was a stockholder,
16 is that correct?

17 A The name is not familiar to me but I think he
18 was one of the stockholders.

19 Q He was asking a question in the second
20 paragraph, isn't that correct?

21 A Yes, sir.

22 Q He says "I would like to know what amount of
23 stock these officers still hold in Bell-Co Film Corpor-
24 ation and whether after this trade that will be considered
25 insider stock or whether it will be considered stock that

2 about a week ago?

3 A Approximately.

4 Q And neither Mr. Nelson Mahler nor anyone else
5 showed you this letter of intent?

6 A I don't have any recollection of it.

7 Q You were asked about other persons who were
8 present at that airport meeting, Kennedy Airport, when you
9 and Mr. Mahler and Mr. Greenberg concocted a false story.

10 MR.JANIS: Objection, your Honor.

11 THE COURT: Sustained.

12 Q Do you remember the meeting at the airport
13 that was the subject of your direct testimony?

14 A Yes, sir.

15 Q And you mentioned in your cross-examination
16 there were other people there. Were those other people party
17 to that conversation regarding what you would say as to
18 when you had met Mr. Greenberg?

19 A I don't know. I don't think so.

20 Q Finally, you were asked about other matters
21 that you had done work with for Mr. Nelson Mahler.

22 A Yes, sir.

23 Q And the final or nearly final piece of work
24 you did was in connection with something called ITS, is that
25 right?

H. Herman - redirect

1 gwds 3

2 A Yes, sir.

3 Q And you submitted a letter of resignation
4 with regard to that representation?

5 MR. JANIS: Objection, your Honor.

6 THE COURT: Did you submit a letter of resig-
7 nation?

8 THE WITNESS: Yes.

9 MR. JANIS: I object to this whole line of
10 questioning, not just the form of that particular question.

11 THE COURT: Overruled.

12 Q I show you Government's Exhibit 790 for identi-
13 fication. Is that a letter you sent to Mr. Nelson or a
14 copy of a letter you sent to Mr. Nelson?

15 A Yes, sir.

16 Q In it did you put in your reasons for resign-
17 ing?

18 A Yes, sir.

19 MR. RAKOFF: I will offer 790.

20 MR. JANIS: Your Honor, we object on the ground
21 of relevancy.

22 THE COURT: Let me see it.

23 (Document handed to Court)

24 THE COURT: Sustained.

25 MR. JANIS: May I ask the Court instruct the

2 jury to disregard all questions concerning that?

3 THE COURT: What was the question I am to ask
4 them to disregard -- that he wrote a letter?

5 MR. JANIS: The subject of ITS and anything
6 to do with it.

7 THE COURT: No. The testimony is entirely
8 appropriate. The letter is eliminated for a legal reason.

9 Q One last question, Mr. Herman.

10 The \$12,000 that you received in connectin with the
11 freeing of the stock for Mr. Mahler and Mr. Zucker, who
12 paid you that money?

13 A My recollection is that half was paid by
14 Mr. Mahler, Acquisitions and Investors, and half was paid
15 by Mr. Zucker through his company.

16 MR. RAKOFF: No further questions, your Honor.

17 THE COURT: Anything else?

18 MR. SHARP: I have just a few more, your Honor.

19 THE COURT: Go ahead.

20 RE CROSS-EXAMINATION

21 BY MR. SHARP:

22 Q Mr. Herman, you indicated that \$6000 of \$12,000
23 came to you through Acquisitions and Investors, is that
24 correct?

25 A Yes.

MR. RAKOFF: You were going to make a stipulation, I believe.

MR. SHARP: I will make a stipulation with regard to that letter and also the other letters I showed you --

THE COURT: Is this a question or colloquy?

MR. SHARP: Mr. Rakoff and I, with your Honor's permission --

THE COURT: I am not interested in any conversation. Ask the witness questions; we are interested only in evidence.

Q I believe you wanted to make a statement with respect to that signature. Would you please do that? Do you have any recollection as to how the signature may have gotten on the paper?

A I don't believe that this is my signature. However, it is possible that my secretary -- very often I would instruct her, unless it is an opinion letter, I would say to her, "Put my signature on it and send it out."

So it is possible my secretary put the signature Hal on it. She would know a letter to Ted Zucker would be signed that way.

THE COURT: We are not interested in what is possible.

Strike out that answer.

We are not here in the realm of conjecture.

Q With Mr. Kulekofsky and Mr. Zucker, you did deal with them, did you not?

A Yes.

Q You dealt with them, you did work for them, is that correct?

A Mr. Kulekofsky, never; and for Mr. Zucker, the only time I ever did anything for him outside of mergers with Mr. Mahler was when I formed the corporation Script Equities.

Q It says "Copy to Louis Kule," doesn't it?

MR. RAKOFF: That letter is not in evidence.

THE COURT: I didn't get what the question was. Are you talking about a letter not in evidence?

MR. SHARP: I will move it into evidence and the other defense exhibits to which Mr. Rakoff and I have stipulated.

THE COURT: Is there an objection to the letter being received in evidence?

MR. RAKOFF: No.

THE COURT: Received.

(Defendant Mahler Exhibit A received in evidence)

Mahler

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2 Q Through July 31, 1973?

3 A As of that date, yes.

4 Q Were they initially asked to prepare an audit?

5 A Yes, they were.

6 Q Was that in connection with suspension of the

7 stock?

8 A Yes, it was.

9 Q Did you find it impossible to do an audit?

10 THE COURT: Were you able to do an audit?

11 THE WITNESS: We were not able to do an audit.

12 THE COURT: Why not?

13 THE WITNESS: There were certain scope limita-

14 tions in connection with that work that precluded us from

15 rendering an opinion and completing an audit.

16 THE COURT: Would you translate that in terms

17 of common understanding?

18 THE WITNESS: Unless a CPA is able to render

19 sufficient audit work from the examination of the financial

20 statements, those financial statements will be put out on

21 an unaudited basis and that's the basis on which we issued

22 those financial statements.

23 THE COURT: You mean if you can't check out

24 what you are looking for, you won't certify the statement;

25 is that what you're saying?

THE WITNESS: Basically that's correct.

THE COURT: It's a little easier that way to understand.

Q From the things you were able to check out, did you issue an unaudited statement?

A We issued an unaudited statement.

Q What was that based on?

A A review of the accounting records and certain auditing procedures.

THE COURT: Does that mean any more than all that you did was to look at some documents and procedures and say this is what they show, without giving an opinion one way or another, whether it was right or wrong? Is that what you mean?

THE WITNESS: If I can explain what I mean, I would probably say that in the general unaudited statement, a CPA reviews accounting records and makes limited inquiries of management and perhaps some adjusting entries in relationship to the figures and then issues an unaudited statement.

In this case our work was much more extensive because we were originally retained for an examination and perform an audit of those financial statements, but in a number of major areas, we were unable to either proceed or

2 to gather sufficient data to apply the auditing procedures
3 that we felt would be necessary in that case.

4 So, here we have a situation in which we have
5 issued an unaudited statement but have a lot of in-depth
6 review and examination of certain areas of that statement.

7 THE COURT: The long and short of it is that
8 you didn't vouch for what was on your statement, is that
9 right?

10 THE WITNESS: That's correct.

11 THE COURT: And if you certified something,
12 you would have been vouching for what was on the statement
13 and you didn't do a certification, is that it?

14 THE WITNESS: That's correct.

15 Q And the extensive review you referred to is
16 reflected, is it not, in your various work papers and other
17 papers from that review, is that correct?

18 A That's correct.

19 Q Those are Government Exhibits 544, 545 and 629
20 in evidence, is that correct?

21 A That's correct.

22 Q In your review include, among other things,
23 going through the actual books and records of the company
24 for its sales and for its expenses and for its other
25 financial operations?

1 hpbr 10

2 MR. RAKOFF: Your Honor, we have two wit-
3 nesses, one is short and one is long.

4 THE COURT: Let's take the short one.

5 MR. RAKOFF: I didn't want to start the long
6 one unless your Honor wants to go straight to 5 o'clock --

7 THE COURT: There is no reason why we shouldn't
8 go through to 5 o'clock.

9 MR. RAKOFF: The government calls David
10 Norblom.

11 MR. BLACKSTONE: Your Honor, are we going to
12 have a mid-afternoon recess, five minutes?

13 THE COURT: You want a recess now?

14 MR. BLACKSTONE: Yes.

15 THE COURT: All right, ladies and gentlemen,
16 we will have a recess.

17 (Jury leaves the courtroom.)

18 THE COURT: Mr. Janis, you handed some kind of
19 paper up here. Let's look at it to see what it is.

20 MR. JANIS: Yes, your Honor.

21 (Handed.)

22 THE COURT: I have a curious objection as to
23 what the witness had to say. There is nothing in any
24 direction I had here to information given that warrants the
25 statement that is made here. There was no objection

1 hpbr 11

2 to the testimony that was voiced. The lawyers are free and
3 know they are free and have heretofore utilized their
4 right to make objections in open court and the only thing
5 that they are restricted from doing had to do with not
6 comment on the first trial, but comment on acquittals.
7 Frankly, in addition to not being factual, this Court
8 exhibit attempts to confuse what the plain instructions to
9 the lawyers are, and I will reiterate for the fifth, sixth
10 or seventh time that any evidence that is deemed to be ob-
11 jectionable or questioned as deemed to be objectionable
12 will have to be objected to at the time, and not as a matter
13 of second guessing or after a witness has departed from the
14 witness stand.

15 The only restriction has to do with airing
16 lawyers' opinions about why the objection is or isn't
17 sound, and that can be put on a memorandum paper. That the
18 jury are not interested in so far as consideration of the
19 evidence.

20 MR.JANIS: Your Honor, may I state something
21 for the record, please.

22 I understand the Court's ruling. With that
23 objection in particular, I thought it would be impossible
24 to just state objections without stating the grounds for
25 objections and I don't know how I could possibly have stated

1 hpbr 12

2 the ground for objections without mentioning anything
3 that Mr. Bialek had been acquitted at the previous trial.

4 THE COURT: I am sorry if you just don't
5 know how to state your objection. I am positive the Eng-
6 lish language has enough expansion in it so as to be able to
7 carry the proper thought if the Court indeed is of any
8 use. The only thing that you are telling me is, you
9 didn't have a chance to get up and tell the jury Bialek
10 was acquitted and that you can't do.

11 MR. BLACKMAN: May I be heard, your Honor?

12 When we originally argued this as to whether
13 or not Bialek's acquittal could be presented --

14 THE COURT: You didn't make any objection.
15 I don't see why you are arguing.

16 MR. BLACKSTONE: The government having taken
17 the position that Bialek committed a crime in connection with
18 the preparation of these financial statements it has opened
19 the door and it permits now the defense to show to prove his
20 acquittal and that's our position.

21 THE COURT: That's your opinion?

22 MR. BLACKSON: That's our opinion.

23 THE COURT: Did you make an objection on that
24 ground?

25 MR. BLACKSTONE: I objected --

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2 THE COURT: Your objection is overruled
3 as lacking merit.

4 (Continued on next page.)

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Q You have never been charged with any wrong-
doing in this matter, is that correct?

A That is correct.

Q You did indeed know Mr. Nelson, isn't that
true?

A Pardon?

Q And you did indeed know Mr. Nelson?

A Yes.

Q When you were trying to establish yourself
in ABS Registrar & Transfer, you did in fact receive small
checks from various people when you opened up your office,
isn't that correct?

A Yes, I did.

Q And Mr. Rakoff didn't ask you the amount of
those checks. It was about ten and fifteen dollars apiece,
is that right?

A Yes.

THE COURT: If Mr. Rakoff didn't ask him
anything the jury will know that and it doesn't call for
any questions from you.

Q The checks were ten of fifteen dollars apiece,
is that correct?

A Yes.

Q Where was your business located, actually?

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Mahler

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Q In May of 1973, were you called to testify
before the SEC in this matter?

A Yes, I was.

Q Did you hire an attorney for that purpose?

A One was -- I was told I had an attorney for
that purpose. I did not solicit him.

MR. JANIS: Your Honor, this is outside the
scope of cross-examination.

THE COURT: It may be inquired into.

Q Did you receive a check to pay legal fees for
that attorney?

A Yes, I did.

Q Who gave you that check?

A Mr. Nelson.

MR. RAKOFF: I have no further questions,
your Honor.

THE COURT: You have been asked questions by
Mr. Rakoff to which you responded with the name Nelson.
He asked you some questions with the name Mahler. Are they
different people are the same person in what you have been
testifying to?

THE WITNESS: They are the same person, but
at the time of the questions, I knew Mr. Mahler as
Mr. Nelson.

THE COURT: You did not know he was Mahler?

THE WITNESS: I can't say at what point in time I knew he was Mr. Mahler.

THE COURT: When he spoke with you, did he identify himself as Nelson?

THE WITNESS: Yes.

THE COURT: Any further questions?

MR. SHARP: I have a few, your Honor.

CROSS-EXAMINATION

BY MR. SHARP:

Q What attorney did you have at the time of the SEC inquiry?

A Mr. Dan Brascher.

Q Who told you that he was your attorney?

A Mr. Ted Zucker.

Q Mr. Rakoff asked about your contacts with Mr. Zucker and Mr. Nelson. Did you continue to see Mr. Zucker after March of 1973?

A Yes, I did.

Q Did there ever come a time when you dealt with Mr. Zucker and Mr. Kulekofsky together after March 1973?

A Yes, I did.

Q And do you ever recall an instance when Mr. Zucker asked you to bring a stamp out to a restaurant

with a farming operation that is carried out in eastern Colorado and western Nebraska.

Q How much of your time do you spend farming?

A I would estimate 40 percent of my time is spent in the farming operation.

Q Did you ever do any legal work for a company called International Industries?

A Yes, I did.

Q Did you ever become a director of that company?

A Yes. I believe approximately October of 1972.

Q In connection with your work with International Industries, did you come to know a man by the name of Dean Ubben?

A Yes, I first had an opportunity to meet Dean Ubben at least once or twice in December of '72.

Q In 1972 and 1973, what was the financial condition of International Industries?

A The financial condition was not good. They had numerous claims that in fact were outstanding against the company and a number of lawsuits were pending against the company, and I think that that was one of the reasons that they retained me to do some work for them. They needed representation in connection with some of these lawsuits.

THE COURT: What do you mean by "not good"?

THE WITNESS: They had many obligations against the company that they were having difficulty meeting.

THE COURT: They couldn't meet their obligations. What about their assets, if any?

THE WITNESS: They had assets but those were somewhat limited.

THE COURT: Were the assets less than the liabilities?

THE WITNESS: Yes, from the information I had.

THE COURT: The company was insolvent on a going concern basis, isn't that right?

THE WITNESS: I believe that to be the case.

THE COURT: That is what you mean by bad financial condition?

THE WITNESS: Yes.

THE COURT: It couldn't pay its bills?

THE WITNESS: Right.

THE COURT: All right.

Q In connection with your work with International Industries, did you have any contact with a Power Regulator Company?

A Yes, I did.

Q Please tell us about that.

A Yes. I was first advised about Powers

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Reese-direct

Q At that time or any other time in New York?

A I did not attend any such meeting at that time or any other time.

Q So those minutes are false?

A The minutes are false.

Q Let me show you Government's Exhibit 622-E, and I ask you if you would look at the signatures on these six letters and could you tell us if that is your signature on any of those documents?

A That is not my signature.

Q That is not your signature on the letter to J. Johnson?

A No, it is not.

Q Looking at the next letter, which was addressed to Laraine Thorpe, is that your signature?

A No, that is not my signature.

Q The third letter is addressed to a D.J. Brighton, is that your signature?

A It is not my signature.

THE COURT: Does that purport to be your name where it says it is not your signature?

A It purports to be my name.

THE COURT: You did not sign those papers?

THE WITNESS: I did not.

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Reese-direct

2 Q And the following three letters, those are
3 also not your signature?

4 A Those are not my signature.

5 Q Despite the fact the typing under the signature
6 says Mr. M. Reese?

7 A That's correct.

8 Q Are those opinion letters freeing up shares of
9 stock?

10 A They appear to be.

11 Q Mr. Reese, do you have any expertise in
12 securities --

13 THE COURT: Freeing up what kind of stock,
14 what company's stock?

15 Q Would you look at the letter, Mr. Reese?

16 THE COURT: What company's stock were they
17 freeing up?

18 THE WITNESS: They refer to Industries
19 International stock.

20 Q And is there another company mentioned in
21 this letter?

22 A I can't read it very well.

23 THE COURT: There is a lamp there.

24 A Bell-Ko Film Corporation.

25 Q Do you know anything about Bell-Ko Film

2 AFTERNOON SESSION

3 2:10 p.m.

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6 (Jury not present.)

7 THE COURT: I have had an opportunity to
8 scan this record, and preliminarily let me say that
9 I have considered again the probative value of the
10 prospective evidence against the prejudicial effect and
11 against any tendency to create unfair prejudice.

12 In my judgment, the tendency to confuse the is-
13 sues or inflame the jury is virtually nil in a case of
14 this kind and with respect to the kind of evidence that's
15 being offered here.

16 The array of evidence in this case so far as
17 I have seen it and examined the exhibits as they have come
18 in leads, in a practical balancing of the intangibles,
19 to favor the probative worth of the evidence against
20 the danger of prejudicial confusion, and accordingly,
21 I will permit the government to proceed as it has
22 indicated.

23 On the other hand, in going through the
24 transcript of the defendant Mahler's testimony, there is
25 a good deal of side information contained in that direct

1 gwbr 2

2 testimony which doesn't bear directly or necessarily
3 with probative value on the subject of the similar act that
4 is attempted to be portrayed. Without attempting to re-
5 dact it all, I would suggest to the government that the
6 seemingly additional items to what is the purpose of the
7 offer be omitted in the reading. If the government happens
8 to have an extra copy that I can follow along with the
9 reading, then I will endeavor to curb any overkill in the
10 reading.

11 I don't think there is anything in there that
12 is prejudicial but it seems it gets too often into irrele-
13 vancy or immateriality, one or the other, and that is
14 unnecessary. That in itself has a tendency to confuse
15 but not on the main purpose of the offer.

16 Bring in the jury.

17 Is this a second copy?

18 MR. RAKOFF: Yes.

19 THE COURT: I will hold this and cross out
20 things that are not read so that when I hand it to the
21 reporter he will have a faithful copy for his transcript.

22 MR. JANIS: May I ask the Court at the ap-
23 propriate time to give a prefatory instruction to the
24 jury?

25 THE COURT: You write out the statement you

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Plew - cross

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Industries International.

Q Is it stamped "Paid" on there?

A It's stamped "Paid" but --

Q Didn't you just say that it was not cleared?

A I'm not sure that it did.

THE COURT: Is that all, Mr. Blackstone?

MR. BLACKSTONE: If I may just have one moment
with my client, your Honor.

(Pause)

MR. BLACKSTONE: No further questions, sir.

THE COURT: Any redirect?

MR. RAKOFF: No, your Honor.

THE COURT: Thank you very much. You are
excused.

(Witness excused)

THE COURT: Is the government ready to go
forward with the new matter we discussed?

MR. RAKOFF: Yes, sir.

THE COURT: Ladies and gentlemen of the jury,
the government is about to offer into evidence information
concerning prior criminal convictions of Mr. Manler in stock
fraud cases bearing substantial similarity to the alleged
conduct indicted in this case.

I admonish you that evidence of other prior

crimes, wrongs or acts of the defendant are not admissible to establish or be considered of evidence of criminal character of the defendant.

Evidence of substantially similar acts in similar situations in the past may be considered solely and only for the limited use as probative of Mahler's knowledge and criminal intent of the alleged criminal acts asserted herein by the government, knowledge and intent of the alleged criminal acts asserted herein by the government, including in the context of the evidence that you receive and credit, the prior similar acts as indicative on the questions here of the subjects of preparation, plan, absence of mistake or accident on Mahler's part.

You may consider whether the evidence tends to undermine any alleged innocent explanation of any acts that the government establishes that were performed by Mahler beyond a reasonable doubt.

So, you will consider the evidence that is about to be offered for a limited purpose. It is not to be considered evidence of criminal character. It may be considered as probative on the issues of knowledge, intent, preparation, plan, absence of mistake or accident in respect to such of the acts and transactions of Mahler as is established to your satisfaction beyond a reasonable doubt

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2 in this case.

3 You may proceed.

4 MR. RAKOFF: First, your Honor, we would
5 offer Exhibits 780 through 784, which will be redacted in
6 accordance with your Honor's instructions this afternoon.

7 THE COURT: Are those judgment of conviction?

8 MR. RAKOFF: They are respectively the indict-
9 ment as to the counts and the judgments of convictions.
10 I'm sorry, the numbers are, the first one is 780, which is
11 the indictment in United States of America vs. Arnold N.
12 Mahler and others on charges of giving false testimony to
13 the SEC under oath and of conspiring to give false testimony
14 under oath.

15 THE COURT: Dated when?

16 MR. RAKOFF: The indictment was filed
17 April 29, 1965, in his courthouse.

18 THE COURT: United States District Court for
19 the Southern District of New York, the one we are sitting
20 in now.

21 MR. RAKOFF: Yes, your Honor.

22 (Government's Exhibit 780 received in evidence)

23 MR. RAKOFF: The next exhibit, 781, is the
24 judgment of Mr. Mahler's conviction filed February 9, 1967,
25 on those two counts that I have just mentioned.

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2 THE COURT: On the indictment in the preceding
3 exhibit?

4 MR. RAKOFF: Yes.

5 THE COURT: Received.

xxx 6 (Government's Exhibit 781 received in evidence)

7 MR. RAKOFF: The next exhibit is Government
8 Exhibit 786, which is an indictment filed August 4, 1965,
9 in the case of United States of America vs. Arnold Mahler
10 and others, in this courthouse, charging various stock
11 frauds and stock fraud conspiracy.

12 THE COURT: Received.

xxx 13 (Government's Exhibit 786 received in evidence)

14 MR. RAKOFF: Finally, as to these exhibits,
15 the judgment of conviction filed January 26, 1967, adjudging
16 Mr. Mahler guilty of seven counts of that indictment.

17 THE COURT: Received.

xxx 18 (Government's Exhibit 787 received in evidence)

19 MR. RAKOFF: Now, your Honor, we would propose
20 to read the excerpts as your Honor has indicated, from
21 Government Exhibit 788, certified copies of which have the
22 rules redacted and I would offer that.

23 THE COURT: Received as redacted.

xxx 24 (Government's Exhibit 787 received in evidence)

25 THE COURT: Redacted means that what I have

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2 done is to mark out what should be read and what should not
3 be read and the parts that should not be read, whatever the
4 legal reason is with which you are not concerned, I have
5 crossed off so that the reading will be continuous only of
6 testimony of the defendant Mahler as given in that proceed-
7 ing, the minutes of which the government will now read to
8 you.

9 MR. RAKOFF: Your Honor this is the original
10 (handed).

11 THE COURT: Thank you.

12 MR. RAKOFF: I will read the questions put to
13 Mr. Mahler in his testimony and Miss Chepiga will read the
14 answers he gave.

15 THE COURT: The procedure that is following
16 now is, there is a lawyer who asks the question and the
17 witness Mahler is on the witness stand. It is easier for
18 you to follow if the same lawyer doesn't read the questions
19 and answers so Mr. Rakoff will be in the posture of the man
20 who is asking the questions, and Miss Chepiga will be, for
21 this purpose, Mr. Mahler, who gave the answers.

22 MR. RAKOFF:

23 "Q Mr. Mahler, on December 27 1965 you
24 were convicted of conspiring to give false testimony to the
25 Securities & Exchange Commission in connection with the

compensation you paid your salesmen in selling Bankers
Intercontinental stock?

"A Yes, I was.

"Q Now, on September 26, 1966, did you
plead guilty to Count 1 of Indictment 65 Cr. 698 charging
you with conspiracy to sell by fraudulent means the stocks
of Bankers Intercontinental and Florida Patsand?

"A Yes, I did, sir.

"Q On November 21, 1966, did you for
Broadwall Securities plead guilty to Count 1 of Indictment
65 Cr. 698?

"A Yes, I did, sir.

"Q And did you on November 21, 1966 plead
guilty to six counts of a scheme to defraud in connection
with the sale of stocks of Bankers Intercontinental and
Florida Patsand?

"A Yes, I did, sir.

"Q Mr. Mahler, how old are you?

"A 31 years old, sir.

"Q Are you presently employed?

"A No, I am not, sir.

"Q Were you ever associated with a company
called Broadwall Securities, Inc.?

"A Yes, I was, sir.

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2 "Q What was your association with that

3 company?

4 "A I was president and stockholder.

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"Mahler

2 "Q What was that company, sir?

3 "A It was an over-the-counter securities
4 brokerage firm.

5 "Q Where was it located?

6 "A 26 Broadway, New York City.

7 "Q And for how long did you own and control
8 Broadwall Securities?

9 "A Approximately two and one-half years, sir.

10 "Q From what date to what date?

11 "A September of 1962 until March of 1965.

12 "Q And did you ever have any business
13 transactions with a company called Charters & Company of
14 Miami?

15 "A Yes, I did, sir.

16 "Q And when for the first time?

17 "A Approximately July of 1964.

18 "Q In what connection did you have that
19 association?

20 "A In connection with a stock called Fibercraft
21 Products.

22 "Q What were the circumstances surrounding
23 your business association with Charters and Ribercraft
24 Products?

25 "A I had spoken to Mr. Dermer of Charters &

1 hpbr 2 "Mahler

2 Company in Miami regarding a stock for Broadwall
3 Securities to retail in New York City.

4 "Q Had you known Mr. Dermer previously?

5 "A No, I had not, sir.

6 "Q Please go on.

7 "A Mr. Dermer -- I had spoken to Mr. Dermer
8 to find out if he had available to us a security that we
9 might be able to retail that would be helpful to both he
10 and I.

11 "Mr. Dermer was recommended to me by
12 Mr. Norman Babat, a salesman employed by Broadwall
13 Securities.

14 "I made arrangements with Mr. Dermer to
15 have Broadwall Securities retail Fibercraft Products..

16 "Q What were those arrangements?

17 "A Broadwall Securities was to sell Fibercraft
18 Products and receive a cash kickback equivalent to
19 40 percent of the sales price.

20 "Q From whom were you to receive that cash
21 kickback?

22 "A From Charters & Company.

23 "Q From whom were you to purchase the stock of
24 Fibercraft?

25 "A From Charters & Company.

1 hpbr 3

"Mahler

2 "Q What if anything in these conversations
3 was said in connection with the price of Fibercraft?

4 "A Mr. Dermer would see to it that the pink
5 sheets would quote the stock equivalent to that
6 which we were retailing it at. He would also move
7 it up as the price in retailing continued.

8 "Q Now, then, did the Broadwall salesmen
9 start to sell Fibercraft to the public?

10 "A Yes.

11 "Q When?

12 "A In the end of July, 1964.

13 "Q In what capacity or what function did
14 Broadway perform for its customers?

15 "A Broadwall acted as agent in these trans-
16 actions.

17 "Q Will you explain that, sir?

18 "A Broadwall would purchase the stock from the
19 broker at the price requested by the customer. If a
20 customer sent in a thousand dollars, Broadwall would
21 then be required to send this thousand dollars
22 to the broker for whom he bought the stock."

23 MR.RAKOFF:I believe the next item is on
24 Page 22.

25 "Q Now, on the 23rd of October, 1964, did you

1 hpbr 4

"Mahler

2 have a conversation with Light, Dermer and Strump about
3 another stock?

4 "A Yes, I did. When I entered the offices of
5 Charters & Company, Mr. Light informed me that we
6 may no longer -- that he, I should say, was having
7 problems in obtaining the cash kickback to me, and
8 No. 2, there was not the availability of shares in
9 Fibercraft as much as he would liek there to be.

10 "Mr. Strump asked me if I would be inter-
11 ested in selling what he termed a bank stock. I
12 said yes, I would be interested in selling it. He
13 said that he had a report in the office and suggested
14 that perhaps we could go over it. I suggested that
15 perhaps we do it either tomorrow or that evening
16 as I wanted to get to the hotel to see my wife who ahd
17 also just fown down.

18 "Q On October 24, 1964, did you meet with
19 anyone?

20 "A Yes. I met in the offices of Charters &
21 Company.

22 "Q Whom did you meet?

23 "A I met with Mr. Dermer, Mr. Light, Mr. Kapplow
24 and Mr. Strump.

25 "Q Did you have a discussion with these individu-

1 hpbr 5 "Mahler

2 als on that day?

3 "A Mr. Light only stayed about ten or fifteen
4 minutes and then left the offices. Mr. Kapplow remained as
5 did Mr. Strump and Mr. Dermer.

6 "Mr. Strump gave me the report that he had on
7 a company called Bankers Intercontinental Investment
8 Company, Limited.

9 "Q Now, what if anything did you discuss with
10 Mr. Light before he left?

11 "A Mr. Light said that he was having a problem
12 in getting the cash back to me as I said on Fibercraft
13 and suggested that if we go into a new situation at all
14 it would have to be done other than cash and he thought,
15 and we had discussed the idea, I should say, of having
16 the dollars kicked back to Broadwall in another form
17 other than cash. The only two means that we could think
18 of was that I would sustain a substantial profit on the
19 books of the company.

20 "I believe that this was just about the
21 crux of the conversation that I had with Mr. Light.
22 He wanted to shy away from the sale of Fibercraft
23 Products.

24 "Q Did you have a conversation with Mr. Strump
25 and Mr. Dermer in connection with Government's Exhibit 2?

1 hpbr 6 "Mahler

2 "A Yes, I did, sir. I went over the report
3 very superficially, very quickly and I primarily
4 asked the question before I read through the report of
5 what dollar kickback to Broadwall there would be.
6 In lieu of Mr. Light's statement that there would be
7 some problems as to paying me cash I had hoped that
8 the amount would be greater than I was receiving pre-
9 viously. Mr. Dermer said that it would probably
10 be in the amount of about 30 per cent. In my conversations
11 I explained that seeing that it was going to be on the
12 books of the company, someone was going to have to pay
13 taxes on the money and I was going to have to pay my
14 salesmen cash so that there would have to be a greater
15 percentage.

16 "Mr. Strump said that he felt that the report
17 read well and the price of the stock being approximately
18 17-1/2, 18-1/2, should more than offset a higher per-
19 centage kickback.

20 "We agreed basically that there would be
21 a thirty percent kickback to Broadwall."

22 MR.RAKOFF: Turning, Miss Cheniga, to
23 Page 29. At the bottom of the page:

24 "Q Now, on October 24, 1964, when you were at
25 Charters' office, did you discuss anything else with

1 hpbr 7

"Mahler

2 Mr. Dermer or Mr. Strump?

3 "A Yes. I asked Mr. Dermer who would be in
4 the sheets in the particular sheet.

5 "Q What do you mean by that sheet?

6 "A The pink sheets. Mr. Dermer informed me
7 that he would be in the sheets and he would see to it
8 that two or three other brokers also made a market
9 in the stock. He also informed me that there
10 would be approximately 500 to 1,000 shares available
11 for me to sell at each price, one point price increase,
12 which means if I sold a thousand shares at \$20 the
13 next thousand shares would then be sold to me at \$21.

14 "Q Was it discussed in your conversation as to
15 whether or not those thousand shares had to be paid
16 for or just sold?

17 "A These were shares that Broadwall would
18 just sell to customers, whether they were paid for or
19 not.

20 "Q Did you have a conversation with Mr. Dermer
21 in connection with maintaining the market of the
22 stock?

23 "A Not at that particular time. I had a con-
24 versation regarding that and Broadwall two weeks later
25 or three weeks thereafter.

1 hpbr 8 "Mahler

2 "Q Referring to the same date, October 24, 1964,
3 what if any conversation did you have with
4 Dermer in connection with your going into the pink
5 sheets?

6 "A I had agreed with Mr. Dermer that Broadwall
7 would not go into the pink sheets themselves but that
8 when I called Mr. Dermer, he would then refer me to
9 other brokers who would then sell the various securities
10 to me, the purpose of this being that I did not --"

11 MR. RAKOFF: I think the next should be
12 Page 32:

13 "A At that time Mr. Dermer told me that he
14 would refer me to other brokers for the purpose of buy-
15 ing the stock so that neither of our books would
16 show that I bought all the stock from only one broker,
17 meaning Charters & Company.

18 "Q Did you discuss with Mr. Dermer or Mr.
19 Light or Mr. Strump how Charters & Company was going
20 to make their profit?

21 "A Prior to Mr. Light's having left he had
22 informed me that he was able to buy a couple of
23 thousand shares of the stock at approximately \$12 a
24 share.

25 "I had assumed that he would then be

1 hpbr 9

"Mahler

2 selling it to me at a price that would enable him to
3 make a profit."

4 MR. RAKOFF: Turning to Page 34:

5 "Q Now, directing your attention to November
6 3rd, 1964, what if anything occurred?

7 "A I met with Mr. Jack Einiger.

8 "Q Where did you meet him?

9 "A At the offices of Broadwall Securities in
10 New York City.

11 "Q Did you have a discussion with Einiger?

12 A Yes.

13 "Q What did he say to you and what did you say
14 to him?

15 "A I spent about two to three hours with
16 Mr. Einiger going over the transactions that had oc-
17 curred in Broadwall while I was away and then informed
18 him that the new stock we would be selling would be
19 Bankers Intercontinental and gave him a report. I told
20 him that the kickback at this time would be approximately
21 or would be 35 percent and that these profits would then be
22 on the books of the company of Broadwall Securities.

23 Q Directing your attention to November 4, 1964,
24 what if anything did you do?

25 "A November 3rd having been a holiday, the salesmen

1 hpbr 10

"Mahler

2 were all in the office of Broadwall Securities on
3 November 4th at which time I gave each and every
4 one a report on Bankers.

5 "Q What if anything did you tell them?

6 "A I told them that this would be the new
7 stock that we would be selling. They were primarily con-
8 cerned about the commission that they would receive.
9 I told them that they would be receiving approximately
10 17 per cent in cash on their sales.

11 "Q What if anything did you tell them in
12 connection with the price of Bankers Intercontinental
13 stock?

14 "A I told them that the price initially would
15 be approximately 18 or it would be 18-1/2 dollars.
16 There would be 500 shares available at each point there-
17 after, and I also went through the report and picked
18 out one or two salient or important points
19 that I felt would be helpful to them in their selling
20 and suggested that they read through the report and
21 pick out ones that they read through the report and
22 pick out ones that they felt would be helpful to them-
23 selves.

24 "Q On or about November 4, 1964, did you have
25 a conversation with anyone from Charters & Company?

1 hpbr 11

"Mahler

2 "A I spoke to Mr. Dermer in Miami and I in-
3 formed him that we would now start selling Bankers
4 Intercontinental and that he should see to it that
5 the sheets were proper, the pink sheets were proper,
6 and that the salesmen were going ahead to start selling
7 the security.

8 "I also spoke to Mr. Einiger in the offices
9 of Broadwall at that time and informed him that the
10 kickback would be coming in the way of cash which
11 Mr. Einiger and I were pleased with because we were attempt-
12 ing to build up the assets of Broadwall Securities to
13 approximately \$300,000 and this was one way that we could
14 build up the assets of Broadwall.

15 Q Did you say that it was to come to you in
16 cash, the kickback?

17 "A No, in the way of profits on the books of
18 Broadwall Securities.

19 "Q Mr. Mahler, during the course of your
20 selling Bankers, did you purchase the stock from anyone
21 else other than Charters?

22 "A Yes.

23 "Q Did you have a conversation with Mr. Dermer
24 on those occasions?

25 "A Not on all those occasions, no, sir.

1 hpbr 12 "Mahler

2 I had a conversation with Mr. Dermer on several of those
3 occasions where I called him and he referred me to other
4 brokers to purchase the stock from.

5 "Q What were the names of some of those other
6 brokers?

7 "A Financial Distributors, I believe Roth &
8 Company, and I believe Friedman & Company.

9 "Q To whom did you speak at Financial Dis-
10 tributors?

11 "A I don't know, sir.

12 "Q Did the salesmen start to sell Bankers
13 stock?

14 "A Yes.

15 "Q When did they start to sell it?

16 "A November 4, 1964.

17 "Q Mr. Mahler, was there a regular procedure
18 which was followed in your office when the salesmen sold
19 Bankers stock?

20 "A Yes, there was, sir.

21 "Q What was that procedure?

22 "A Salesmen would write out an order ticket for
23 a customer for the purchase of Bankers Intercontinental
24 stock. On it he would list the number of shares
25 to be purchased, the customer, and the price and give

1 hpbr 13 "Mahler

2 the ticket. He would then leave the room.

3 "Q And then what would you do with that ticket?

4 "A I would then figure out on the ticket that
5 was handed to me the total dollars including a commission.

6 "I would then enter this information on a per-
7 sonal clipboard that I kept in my office."

8 MR. RAKOFF: Going next to page 46:

9 Q Were the customers informed of the additional
10 cash commission you were paying the salesman?

11 "A No, they weren't sir."

12 Going on to Page 48:

13 "Q Mr. Mahler, was there a procedure by which
14 you paid your salesmen?

15 "A Yes, there was, sir.

16 "Q While you were selling Bankers
17 Intercontinental stock?

18 "A Yes.

19 "Q What was that procedure that you followed:

20 "A Friday morning I would call the salesmen
21 into my own office and ask them what amount they
22 expected to receive in cash. I had already set down
23 on a record or a sheet of paper each salesman's name
24 and had listed individually the trades that had been paid
25 by his customers for the preceding week, and I had made

1 hpbr 14

"Mahler

2 a calculation of what amount I determined the salesman was
3 to receive.

4 "If this amount agreed with the salesman,
5 we went no further in our conversations. If we disagreed,
6 we went over each and every individual trade to determine
7 where the difference was.

8 "At that point, after having gone through
9 this with each and every salesman, I totalled up the
10 entire amount due in cash to the salesman.

11 "I then went down to my vault at Underwriters
12 Trust Company in New York City, I took out the amount
13 of cash that was required for the salesman and
14 brought these moneys back to the offices of Broadwall.

15 "I then called each salesman in again
16 individually into my office --

17 "Q Did you have anything in your office when you
18 called the salesman in?

19 "A I had the sheet that I just referred to and
20 I also had my own personal clipboard record that
21 I had referred to previously.

22 "Q Was that Government's Exhibit 97 (handing)?

23 "A Yes, sir.

24 "Q All right, please continue.

25 "A I then had each salesman initial next to the

1 hpbr 15 "Mahler
2 trade where his initials appeared for the commissions
3 that he was to receive that week. After he initialled
4 all the trades he was being paid on, I then paid the
5 salesman the cash that he was to receive. This procedure
6 was followed with each salesman."

7 MR.RAKOFF: Turning next to Page 51:

8 "Q Mr. Mahler, how long a period of time did
9 Broadwall sell Bankers Intercontinental?

10 "A Approximately six weeks.

11 Q During that week weeks period of time how
12 much cash commission did you pay the salesmen for selling
13 Bankers?

14 "A Approximately \$27,000.

15 "Q Now, Mr. Mahler, was there a procedure by
16 which you or Broadwall received its kick-back from
17 Charters & Company?

18 "A Yes.

19 "Q What was that procedure?

20 "A During the week, as I have stated, Mr.
21 Einiger would inform me how much money or what
22 customers had paid for what securities. If I may refer
23 to an example, assuming that a customer sent in a
24 check for \$3,000, Broadwall Securities would deposit
25 this check in its own account. Broadwall Securities,

1 hpbr 16 "Mahler

2 on the books of the company, then owed to Charters &
3 Company \$3,000. Broadwall would pay to Charters &
4 Company \$2,000 which left Broadwall with \$1,000 credit
5 in its own account.

6 "Broadwall would arrange with Charter &
7 Company to make a profit in securities that they traded
8 between the two firms equivalent to this \$1,000. The
9 way this was done is Mr. Einiger and myself would decide what
10 stocks we would prefer to use that Broadwall was trading to
11 make a profit in it.

12 "When this was decided and the amount was
13 decided between Mr. Einiger and myself, I would then
14 call Mr. Dermer in Miami and tell him what stockd we were
15 using, how much money he was going to lose to me, and have
16 him back-date his tickets s I back-dated mine. Confirma-
17 tions were exchanged, and the net result being that I
18 received my kick-back on the books of the company equivalent
19 to \$1,000, and Charters & Company received their \$2,000.

20 "Q Now, this process of this back-dating, how
21 did that work?

22 "A If you are referring to physically, we had
23 a clock in the office that I could just turn back with
24 my hand to any day or time that I wanted to.

25 "Q Did you discuss this with Mr. Dermer on the

telephone?

"A I informed Mr. Dermer that I was back-dating my tickets. I don't think I told him exactly how I was doing it.

"Q Mr. Mahler, during this period of time, six weeks, that you were selling Bankers Intercontinental how much of a kick-back did you received from Charters & Company?

"A Approximately \$55,000."

MR. RAKOFF: Turning next to Page 57:

"Q Did you have any other discussion prior to December 11, 1964 with any of the defendants about Florida-Patsand?

"A You are referring now to that conversation or the one that I had later on and any others?

"Q Prior to December 11th and subsequent to the meeting in Light's room.

"A Approximately a week before my being called to the Securities & Exchange Commission I had discussed both with Mr. Light and Mr. Dermer the possibilities of having to sell another security and they had informed me that they were accumulating stock in Florida-Patssand and that Mr. Light would have the availability of buying Florida-Patsand

1 hpbr 18

"Mahler

2 at a realistic price and that this probably would
3 be the next stock if we so considered doing another stock
4 that we would sell."

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"Mahler

MR.RAKOFF: Turning to Page 62.

"Q And did you receive a kickback from Charters & Company for selling Patsand?

"A Yes, I did, sir.

"Q And what was that? How much was that kick-back?

"A 40 percent in cash, sir.

"Q Did you pay your salesmen any kick-back for selling Patsand stock?

"A Yes, I did, sir.

"Q What percentage did you pay the salesmen?

"A The salesmen received 20 percent in cash.

"Q That was on every sale?

"A On every sale, sir."

Your Honor, that concludes my reading.

THE COURT: I think, ladies and gentlemen, that we will recess at this time. One of the lady jurors has a medical appointment she'd like to keep and it is almost at the close now anyhow.

So I will excuse you now until 9:30 tomorrow morning. Good night.

(Jury leaves the courtroom.)

THE COURT: All right, ladies and gentlemen, rec-
(Adjourned to October 20, 1977, at 9:30 a.m.)

Hartman Marine.

Q Hartman Marine, Inc.?

A Yes.

Q Did you ever hear of Hartman Marine?

A I said I might have heard of that. That letter was sent to Broad Hollow Road, which is not my address.

Q In April of 1973, you were not with Mr. Mahler at 150 Broad Hollow Road, is that correct?

A Yes.

Q In fact, you were at Jefferson Retread, you had an office there?

A I was there, I was at Nationwide Measuring or I would be at home.

Q And where else?

A I could be at Mr. Kulokofsky's office.

Q In fact, during that period of time you worked periodically out of Mr. Kulekofsky's office, isn't that right?

A As one of the offices that I had used, that's right.

Q Can you answer the question yes or no?

A Yes.

THE COURT: He said it was one of the offices he used.

1
2 A Yes.

3 Q I believe you also indicated that -- let me
4 withdraw that.

5 Q Did there come a time when Mr. Kulekofsky began
6 to come to your offices, the offices that you and Mr.
7 Mahler had?

8 A First of all, it was Mr. Mahler's office.

9 Q It wasn't your office?

10 A No. Mr. Mahler rented the suite. I had
11 one office there.

12 Q You had one office there?

13 A I had one room in Mr. Mahler's office.

14 Q Did you have your own office?

15 A Yes.

16 Q Did Mr. Kulekofsky begin to come by there
17 in the spring of 1972?

18 A I am not sure if it was the spring. It was
19 some time in '72.

20 Q In fact, his fiancée worked there, isn't that
21 correct?

22 A Yes.

23 Q How did she get the job?

24 A I don't remember.

25 Q You had nothing to do with that, did you?

A I might have. I don't remember.

O Did you?

A I don't remember I just said.

O You don't know how she came to work there, is that right?

THE COURT: Isn't that the same question you have asked four times now?

MP. SHARP: I maybe mistaken but there are times I don't think I am getting an answer.

THE COURT: I think you got an answer. You got an answer three times out of the four.

A Did there come a time when she went to work there?

A Yes.

O When was that?

A Some time in 1972.

O And did Mr. Kulekofsky begin to drop by there?

A Yes.

O And was he there during the summer periodically in and out?

A I don't remember the times, the time of the year. He was there when she worked there.

O When did you first come to know Kulekofsky?

A I met Lou Kulekofsky about a year or two

1 gwds 6 Zucker - cross

2 Q You did talk to Mr. Ubben, didn't you?

3 A Yes.

4 Q But you say it was primarily Mr. Nelson who
5 did the talking with Mr. Ubben?

6 A Mr. Nelson handled the companies coming into
7 the shells, and I handled the shell end of it.

8 Q What you are saying is you handled Bell-Ko?

9 A Yes.

10 Q You did all the negotiations with Mr. Greenberg
11 on Bell-Ko?

12 A Most of it, yes.

13 Q And you overheard Mr. Mahler talking on the
14 phone?

15 A Yes.

16 Q Had you ever met Dean Ubben?

17 A I met him when he came --

18 THE COURT: You keep on piling a second
19 question on top of the first one and it is difficult to
20 get an answer in between. You will have to slow up.

21 MR.SHARP: I apologize.

22 THE COURT: In addition to which, the reporter
23 is having his trouble taking it down when you keep on moving
24 ahead.

25 MR.SHARP: I have a habit of talking too fast,

1 gwds 6 Zucker - cross

2 Q You did talk to Mr. Ubben, didn't you?

3 A Yes.

4 Q But you say it was primarily Mr. Nelson who
5 did the talking with Mr. Ubben?

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7 the shells, and I handled the shell end of it.

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11 on Bell-Ko?

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23 is having his trouble taking it down when you keep on moving
24 ahead.

25 MR.SHARP: I have a habit of talking too fast,

qwhr 3

Zucker-cross

2 THE WITNESS: Your Honor, I am not sure if we
3 signed it on March 7th.

4 THE COURT: Did Industries International
5 have any value in fact? You are talking about
6 market price, I am talking about value.

7 THE WITNESS: It had small value.

8 Q You were guaranteeing the worth of that stock
9 and the others listed there as \$50,000 in that agreement,
10 isn't that right?

11 A I was guaranteeing that two years after the
12 date it would be \$50,000.

13 Q \$50,000?

14 A Two years after the date of the transaction.

15 Q \$50,000?

16 A Yes.

17 Q And you signed that on March 7th or there-
18 abouts?

19 A Yes.

20 Q Mr. Zucker, you indicated in your testimony
21 this morning that that same evening, March 7th, that you
22 had a meeting with Mr. Kulekofsky and you say with
23 Mr. Mahler and you say that meeting took place in
24 Mr. Mahler's office and the cover-up was discussed there,
25 is that right?

t 2b pm

THE COURT: Have you removed something from the exhibit?

MR. SHARP: We have a note on the exhibit.

THE COURT: Was it part of the exhibit as offered?

MR. SHARP: Your Honor, it is --

THE COURT: Please return it in the form in which it was.

MR. SHARP: Certainly. It is the verification of the messenger --

THE COURT: I don't care what it was. You just took something off the exhibit and I would like to have the exhibit remain as it was.

MR. SHARP: Maybe we can make these A and B.

THE COURT: The original exhibit is marked N. It can be N-1 and N-2.

(Defendants' Exhibits N-1 and N-2 were marked for identification.)

Q Let me show you what has been marked as Defense Exhibits N-1 and N-2 for identification. N-1 is a receipt from the Messenger Service, Walsh Messenger Service, is it not?

A Yes.

Q From your offices at that time to Kule

1 hpbr 6

Zucker-cross

2 Q You say it is undated?

3 A Yes. No date on this .

4 Q Isn't it April the 1st?

5 A No, it's undated April -- it's a slash. I'm
6 sorry, to me it appears undated. It was in April and it
7 could have been the 1st.

8 Q It appears to be April 1st and signed by your
9 wife?

10 A I think I didn't pay him for about two weeks
11 later.

12 Q The document was signed on April the 1st
13 though?

14 A I said from this document I can't tell if
15 its a one or a slash. It appears to be a blank date that
16 can be filled in at a later date.

17 Q Is that your wife's signature?

18 A Yes.

19 THE COURT: Was it signed on a Sunday?

20 THE WITNESS: I don't believe so.

21 THE COURT: April 1st, 1973 happened to
22 be a Sunday.

23 MP. SHAPP: Yes, your Honor.

24 Q Is that your wife's signature?

25 A Yes, that's my wife's signature.

THE COURT: You say it couldn't have been signed on Sunday?

THE WITNESS: It looks like a slash to me. Very often it was Mr. Nelson's custom for a date to be filled in, with a slash.

THE COURT: You didn't do it on a Sunday?

THE WITNESS: I don't believe so, no.

Q A check was drawn on the third, three days later.

THE COURT: Three days later than what?

MR. SHARP: The 1st, the Sunday, your Honor.

THE COURT: The 3rd was a Tuesday, correct?

MR. SHARP: Yes, sir.

Q A check was drawn three days later as I understand it, in your direct testimony, for \$30,000?

A That's correct.

Q And it was drawn on the Jefferson Petread Company?

A Yes.

Q And you didn't draw that check, you didn't sign it?

A No, but I authorized the check.

Q In fact you told Mr. Brodsky to whom to fill

1 hpbr 11

Zucker-cross

2 It wasn't diaries. These are memo books.

3 Q Did you have memo books for the week of the
4 7th of March 1973?

5 A I don't recall it. The government copied what
6 I gave them.

7 Q You didn't turn that over to the government,
8 did you?

9 THE COURT: He just got through saying he
10 didn't recall. I don't see why these questions have to
11 ignore the answers.

12 MP. SHARP: I will rephrase it, if your Honor
13 please.

14 Q In other words, you turned over some and
15 didn't turn over others?

16 A I turned over whatever I had in my possession
17 when they asked me.

18 Q Did you destroy any of them?

19 A No.

20 Q You just lost them?

21 A I turned over whatever I had when they asked
22 me.

23 Q And you didn't have them all at the time they
24 asked you?

25 A If I didn't turn them over, then I didn't

1 gwds 5 Zucker - redirect

2 copy that are sent to the customer?

3 A Yes.

4 Q If you had sold those shares, or your wife,
5 they would have been sent to you or your wife?

6 A Yes.

7 MR. JANIS: Objection, your Honor.

8 THE COURT: Sustained.

9 In the ordinary course and practice, if a
10 customer sells stock, to whom is the confirmation sent?

11 THE WITNESS: Are you asking me that, your
12 Honor?

13 THE COURT: Yes.

14 THE WITNESS: Sent to the buyer or seller of
15 the stock.

16 THE COURT: That is the question but the form
17 was objectionable previously.

18 Q And did you ever receive this at all?

19 A No.

20 Q It was introduced by Mr. Mahler's attorney,
21 was it not?

22 A Yes.

23 Q Incidentally, the account number there is
24 960040319, is that right?

25 A That's what appears on there, yes.

2a am

2 THE COURT: What other questions do you have?

3 MR. JANIS: May I have this marked a defense
4 exhibit, please.

ix

5 (Defendants' Exhibit R was marked for
6 identification.)

7 MR. JANIS: Your Honor, I am showing
8 Defendants' Exhibit R to Mr. Rakoff.

9 While he is doing that, may I have this marked
10 Defense Exhibit S?

x

11 (Defendants' Exhibit S was marked for
12 identification.)

13 MR. JANIS: I am also handing Mr. Rakoff
14 Defendant's Exhibit S.

15 CONTINUED VOIR DIRE

16 BY MR. JANIS:

17 Q Mr. Steinert, let me ask you this question.
18 Are there any documents in evidence or to the best of your
19 knowledge any testimony in evidence that Mr. Dowell and
20 Mr. Herman knew one another?

21 MR. PAKOFF: Objection.

22 THE COURT: Objection sustained.

23 Q Let me show you Defendants' Exhibit R
24 for identification. Would you take a look at that,
25 please. Would you tell us what Defendants' Exhibit R is?

2 MR. RAKOFF: Objection.

3 MR. JANIS: I haven't moved it into evidence.

4 THE COURT: You have not?

5 MR. JANIS: Not yet. He can certainly
6 identify what it is for the jurv.

7 THE COURT: Let me see it. It may be that
8 the identification is objectionable.

9 (Document handed to Court.)

10 THE COURT: This is a letter dated August 7, 1974
11 what else do you want to know about it?

12 Q Does it have a signature on the letter,
13 Mr. Steinert?

14 THE COURT: You can't convey your thoughts while
15 you are walking in the other direction.

16 Q Mr. Steinert, is there a signature on that
17 letter?

18 THE COURT: Are you going to qualify him
19 as a handwriting expert on the signature?

20 MR. JANIS: No. At this point I am merely
21 asking him if there is a signature on the letter.

22 THE COURT: Yes, there is a signature on the
23 letter. That is self-evident.

24 Q Is there a name above the signature?

25 THE COURT: There is a name above the sig-

1 nature.

2 Q Is that Harold Herman?

3 MR. PAKOFF: Objection.

4 THE COURT: There is a typewritten name and
5 a signature to that effect, yes. Now what? I am doing this
6 only because there is an objection to the letter and I think
7 that you know exactly why I am doing it.

8 MR. JANIS: I am not sure, but let me pursue
9 it a little further.

10 THE COURT: You can't prove the thing through
11 the back door. That is the point.

12 MR. JANIS: This is the first time I have
13 ever had a chance to inquire of the Court this way.

14 Q Your Honor and Mr. Steinert, during the course
15 of your examination of the documents in this case, have
16 you had occasion to see other documents that have been admit-
17 ted into evidence in this case with Mr. Herman's signature
18 on it?

19 A Yes, sir.

20 Q Would you recognize Mr. Herman's signature?

21 A Not particularly, no.

22 MR. JANIS: Your Honor, subject to the
23 reservations earlier we have no objection other than the
24 objection we noted yesterday.

THE COURT: All right.

It may be we can cure that objection so as to save time. Let me just ask these questions of the witness.

Take Government's Exhibit 802-A for identification in your hands.

The bottom box on the left-hand side says that Government's Exhibit 194 shows a deposit in Chemical Bank & Trust Company for the account of Acquisition and Investors Limited to the account stated there, that being a company identified in evidence as belonging to Mr. Arnold Nelson Mahler where they credit \$7500.

Is that what Government's Exhibit 194 shows?

THE WITNESS: Yes, your Honor.

THE COURT: Government's Exhibit 194 purports to represent a payment that came out of the National Bank of North America, account of Harold Herman by a check No. 634 for \$7500 to Acquisitions and Investors Limited.

Is that what Government's Exhibit 337 shows?

THE WITNESS: I believe that's Government's Exhibit 328, your Honor.

THE COURT: 328?

THE WITNESS: That's right.

THE COURT: The money to produce that check of \$7500 was embraced in an amount of \$15,000, and did that

\$15,000 come out of a wire that had been sent from the
First National Bank of West Des Moines to Harold Herman?

THE WITNESS: Yes, your Honor.

THE COURT: Harold Herman's account?

THE WITNESS: Yes, your Honor.

THE COURT: Is that shown by Government's
Exhibit 711?

THE WITNESS: 711 and also the deposit is Govern-
ment Exhibit 337, sir.

THE COURT: 337?

THE WITNESS: That's right.

THE COURT: So that the only question that's open
is whose account was charged at the First National Bank
of West Des Moines for that \$15,000 wire, is that right?

THE WITNESS: That is correct, sir.

THE COURT: All right, go ahead.

802 and 802-A are received in evidence subject
to the identification of the account at the First National
Bank of Des Moines which was charged for the \$15,000 which
ultimately resulted in \$7500 credited to Mr. Mahler's
corporation and \$7500 credited to Mr. Zucker's corporation.

(Government's Exhibit 802 and 802-A were received
in evidence.)

VOIR DIRE EXAMINATION

BY MR. JANIS:

Q Mr. Steinert, let me ask you a question about that. Mr. Rakoff just inquired about these characterizations being based on both exhibits and testimony, is that right?

A Yes, sir.

Q And that was testimony at this trial?

A Yes, sir.

Q And as a result of testimony at this trial you prepared this chart, is that right?

A In part.

Q Isn't it a fact you prepared these charts before the testimony came in?

A Part of them.

Q Mr. Steinert, you prepared these charts summarizing the evidence before the evidence was adduced?

A Not at all.

Q There hadn't been any testimony in this courtroom when you prepared these charts, is that right?

A Basically, as far as 806 is concerned, there is no testimony that it is involved in 806. It is all on evidence that is in --

THE COURT: All exhibits?

THE WITNESS: Yes.

BY MR. JANIS:

Q So when you told Mr. Rakoff not more than a minute ago it was based on testimony as well --

THE COURT: He says that the chart is prepared from the exhibits. Let's not waste time here.

MR. JANIS: But not on testimony, is that correct?

THE COURT: He said the chart is prepared from the exhibits. This is no time to sum up, please.

MR. BLACKSTONE: May I ask a question on voir dire, your Honor?

THE COURT: Certainly.

VOIR DIRE EXAMINATION

BY MR. BLACKSTONE:

Q Mr. Steinert, there is a reference to new insiders, in the caption on the top of Uhben, Mahler and Zucker, 440,000 shares?

A Yes, sir.

Q Does that include the 166,000 shares that we have in the government's case? I don't have the exhibit in mind. It relates to two 83,000 --

MR. JANIS: 622-A and C.

received in evidence.)

3 THE COURT: The purport of this Exhibit 806-A
4 is to trace out how the stock or the claim to the stock
5 of Bell-Ko Film Corporation's common stock existed before
6 exchanging Bell-Ko stock for Industries International
7 stock, is that right?

8 THE WITNESS: That is correct, sir.

9 THE COURT: These were the intermediate
10 changes that occurred prior to the time that there was an
11 actual exchange of Bell-Ko stock for Industries Inter-
12 national stock in accordance with the merger?

13 THE WITNESS: That is correct, sir.

14 BY MR. PAKOFF:

15 Q Mr. Steinert, would you go through that chart
16 and show us exactly what it illustrates?

17 A Bell-Ko Film Corporation had 664,000
18 shares of stock outstanding.

19 THE COURT: That is the first box on the left-
20 hand top side, is that right?

21 THE WITNESS: That is correct.

22 A Coming down to the second box right underneath
23 it, public shareholders had 200,000 shares.

24 Q Let me stop you at that point. Those were
25 the shares that had been previously the subject of a short

form of registration known as Regulation A?

A That is correct.

Q They were the only ones, am I right,
that became automatically -- withdrawn.

If there had been compliance with Rule 133 and
a genuine 133 exemption existed, those would be the ones
that would be freed up, is that right?

A That's correct.

Q And --

THE COURT: The next set of boxes shows who
held the 664,000 shares, is that right?

THE WITNESS: The 464,000 shares.

THE COURT: The next set of boxes. You start
with 664 and then you show who held the 664?

THE WITNESS: That's right.

THE COURT: The public held 200,000 on the left
side and then you have on the right-hand side, the big box,
the 464,000 which together with the 200 makes it 664 that
you started with?

THE WITNESS: That is correct, your Honor.

THE COURT: Go ahead.

Q And when those certificates were issued to
T. Zucker as agent for A. Nelson, they broke down into
those five certificates that I have listed there, is that

1 gwbr Steinert-direct 1045
2 right?
3 A That is correct.
4 Q Incidentally, the delivery receipt gives it just
5 that way, does it not, Mr. Zucker as agent for Mr. Nelson?
6 A Yes, sir.
7 Q And then -- and those are the five people, four
8 of them having 83,000 and one certificate being for 132,000?
9 A That is correct.
10 Q All right, go on.
11 A From this 464,000 we go over to the left,
12 Donna Brighton picked up 14,000 shares and then she had
13 assignment for 83,000 shares for a total of 97,000 shares.
14 P.K. Kaisner picked up 83,000 shares and that's
15 a total of 180,000 shares of stock in Ubben's nominees.
16 Q And myself --
17 THE COURT When you say those two women picked
18 up those shares, what you are saying is that those shares
19 were put in those names?
20 THE WITNESS: The names or the assignments, that
21 is correct.
22 THE COURT: The names or the assignments. And those you
23 list down together as 180,000 shares in the names of
24 Ubben nominees?
25 THE WITNESS: That is correct, sir.

Q And specifically, Mr. Steinert, there was a 14,000 share certificate, a new certificate, typed out in the name D.J. Brighton, is that right?

A Yes, sir.

Q And there were two transfers from Mr. Vizvardis and Mr. Sher, one to D.J. Brighton and one to P.K. Kaisner?

A That's right.

Q And those purported to have occurred in 1970 on their face, correct?

A Yes, sir.

Q But the testimony yesterday indicated that that --

MR. BLACKSTONE: Objection, your Honor.

THE COURT: Never mind that.

Q Would you go on with the rest of the distribution of those shares?

A Going to the next box, going over the box headed Donald H. Mason, 10,000 shares, Dino Efstation, 10,000 shares and Marvin Greenberg, 40,000 shares, these were the old insiders that retained a portion of their stock for a total of 60,000 shares by old insiders.

THE COURT: What you are saying is that Mason, who is in the big box for 83,000 retained 10,000?

THE WITNESS: Yes, sir, your Honor.

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Steinert-direct

1047

THE COURT: And Greenberg who is in the big box for 132,000 retained 40,000?

THE WITNESS: Yes, your Honor.

THE COURT: And that makes 60,000 retained by those three persons out of the larger amount they started out with as shown by the big box?

THE WITNESS: That is correct, your Honor.

Q Incidentally, Mr. Steinert, do the exhibits in evidence indicate to whom the 40,000 shares of Mr. Greenberg were then sold?

A Yes, they do.

Q To whom were they sold?

A John R. Potter & Company.

Q And where did they go?

A DuVest for the account of Anted Vending.

Q And do the documents in evidence indicate who Anted Vending was?

A Yes, sir.

Q Who was that?

A Zucker and Mahler.

Q And from there, the stock then went on to the Central National Bank of Des Moines?

A 35,000 shares.

eot 2a a²⁵

1 gwds 2 Steinert - direct

2 A Yes, sir.

3 Q And finally, the public shareholders retained
4 their 200,00 shares, is that right?

5 A That's correct.

6 Q Incidentally, going back now to that second
7 shot where we had that question about Larry Dowell, I show
8 you Government Exhibit 133, and is that the exhibit you were
9 referring to as showing the 15,000 came from Mr. Dowell?

10 A Yes, sir.

11 MR. RAKOFF: We will offer 133, your Honor.

12 MR. JANIS: Your Honor, may I see it?

13 (Document handed to Mr. Janis)

14 MR. JANIS: Your Honor, may I inquire of
15 Mr. Steinert?

16 THE COURT: Yes.

17 VOIR DIRE EXAMINATION

18 BY MR. JANIS:

19 Q Do you have a copy of 133 in front of you,
20 Mr. Steinert?

21 A Yes, I do.

22 Q And that is an investment letter, is it not?

23 A Yes, sir.

24 Q Does that letter authorize the transfer of
25 stock?

1 gwds 3 Steinert - direct

2 A No.

3 Q Does an investment letter have anything at all
4 to do with the transfer of funds?

5 A No, but the notation down below by Mr. Dowell
6 states it.

7 Q There is a notation below, is that correct?

8 A That's correct.

9 Q And it's in handwriting?

10 A That's right.

11 Q Do you recognize the handwriting?

12 A I was told by Mr. Dowell in Des Moines that he
13 wrote this.

14 MR. JANIS: I object to this. That is certainl
15 not evidence in this case.

16 THE COURT: Strike it out.

17 Q Do you recognize the handwriting?

18 A No.

19 MR. JANIS: I have the same objection, your
20 Honor.

21 THE COURT: What is that objection? You mean
22 the classic objection?

23 MR. JANIS: I don't believe they have tied this
24 up properly.
25

BY MR. RAKOFF:

Q Did you, Mr. Steinert, correlate the information shown on that investment letter with Government's Exhibit 771, I think, the transfer of funds in terms of dates, who it went to, account number and all the other information shown thereon?

A Exhibit 711.

Q 711. I am sorr.

A Yes, sir.

Q And did they perfectly correlate?

MR. JANIS: Your Honor, I object. That is a conclusion.

THE COURT: Was there a correlation between the two?

THE WITNESS: Yes, your Honor.

THE COURT: Was the correlation exact?

THE WITNESS: The date on the investment letter is 12/21, the date on the transfer is 12/22, your Honor

THE COURT: And except for that information is the information parallel?

THE WITNESS: Absolutely, your Honor.

THE COURT: Let me see the two document.

(Documents handed to Court)

THE COURT: In whose file did you find Govern-

1 gwds 5 Steinert - direct

2 ment's Exhibit 133?

3 THE WITNESS: This was provided to us by
4 Mr. Sutphin, I believe, my Dowell's lawyer.

5 THE COURT: From the files of Mr. Dowll?

6 THE WITNESS: From Mr. Dowell's fiels, yes, your
7 Honor.

8 THE COURT: There is sufficient prima facie
9 connection established here for it to warrant the introductio
10 of this document at this time.

XXX 11 (Government's Exhibit 133 received in evidence)

12 GY MR. RAKOFF:

13 Q Mr. Steinert did you also perpare a chart
14 sujmarizing the moneies going into andout of the Tina bank
15 account.

16 A Yes, sir. 804.

17 Q Miss. Chepiga is showing you 804. Is that
18 a chart you prepared from exhibits in evidence?

19 A Yes, sir.

20 Q And on the back have you attached 804-A, sow-
21 ing the primary exhibits you used to prepare that chart?

22 MR. RAKOFF: We will offer 804 and 804-A.

23 MR. JANIS: Your HONor, may I have a copy
24 of 804-A?

25 (Document handed to Mr. Janis)

1 gwds C Steinert - direct

2 MR. JANIS: Your Honor, I have some voir dire.

3 VOIR DIRE EXAMINATION

4 BY JANIS:

5 Q Mr. Steinert, do you have a copy of Govern-
6 ment's Exhibit 804-A in front of you?

7 A Yes, sir.

8 Q Do you see the box in the middle on the top
9 line, Jefferson Retread?

10 A Yes, sir.

11 Q Is that box accurate?

12 A To the best of my knowledge, it is.

13 Q Isn't it a fact the testimony in this case
14 has shown on April 6, 1973, Mr. Mahler had no connection with
15 Jefferson Retread?

16 MR. RAKOFF: Objection.

17 THE COURT: The objection is overruled.

18 Q Would you answer the question, Mr. Steinert.

19 A I am trying to recall the testimony.

20 Q These charts were based upon the evidence,
21 is that correct?

22 A That's correct.

23 Q And the evidence in this case in the courtroom
24 has been, has it not, that on April 6, 1973, Mr. Mahler had
25 no connection with Jefferson Retread?

1 gwds 7 Steinert - direct

2 A I took this from the bank records, Mr. Janis.

3 Q Let me ask you this question. Maybe I can
4 make it easier.

5 If the testimony did show that Mr. --

6 THE COURT: Just a minute. What about the bank
7 records? Are the bank records part of the evidence in the
8 case?

9 THE WITNESS: Yes, sir.

10 THE COURT: Is there a bank record that you
11 referred to?

12 THE WITNESS: Yes, bank account of Jefferson
13 Retread Manufacturing Corp., sir.

14 THE COURT: Does that show information which
15 justifies the data in that center box?

16 THE WITNESS: to my knowledge, yes, sir.

17 MR. JANIS: May I inquire?

18 THE COURT: Yes.

19 BY MR. JANIS:

20 Q Does the information you refer to show that
21 Mr. Mahler had any connection whatsoever with Jefferson
22 Retread on April 6, 1973?

23 A I believe that there was no new resolution or
24 no new signing card put in for the account, as I recall.

25 Q If the evidence were to show that in fact on

1 gwds 8 Steinert - direct

2 April 6, 1973, Mr. Mahler had no connection with Jefferson
3 Retread, then that box would be inaccurate, would it not?

4 THE COURT: If something shows to the contrary
5 then the contrary is not shown on the chart. Isn't it a
6 self-evidence thing?

7 MR. JANIS: In this case, your Honor --

8 THE COURT: The witness says it is accurate
9 in accordance with the records in evidence.

10 Q Do the records in evidence --

11 A Jefferson Retread.

12 Q The Jefferson Retread records show on April 6 -

13 THE COURT: He said something to the contrary.
14 He said that the records of the bank did not show any change
15 from what they previously showed, and that they previously
16 showed this information.

17 MR. JANIS: Your Honor, I would object. I
18 would move this box be stricken because it is inaccurate.

19 THE COURT: That is your view of it. That may
20 be a competitive or conflicting statement that you want to
21 make, but that doesn't change the fact that the witness has
22 said that the source of this is documents in evidence.

23 MR. JANIS: Your Honor, there is no source
24 identifying Mr. Mahler as being associated with Jefferson
25 Retread on that date.

1 gwds 9 Steinert-direct

2 THE COURT: Mr. Janis, I will repeat it for
3 you once more and that will end the subject.

4 The witness has said that Jefferson Retread
5 Manufacturing Corporation, according to the bank records,
6 shows the information in that box and that there is no
7 contrary showing in the bank records.

8 The objection is overruled.

9 MR. JANIS: May I inquiry further on another
10 point, your Honor?

11 BY MR. JANIS:

12 Q Mr. Steinert, that same box, there is an error,
13 is there not, going downward?

14 A Yes.

15 Q And that indicates that a \$30,000 check was
16 written, is that correct?

17 A Yes.

18 Q And that indicates it was written to Tina
19 Investments, right?

20 A No.

21 Q It doesn't indicate that?

22 A No.

23 Q Who does it indicate the check was written to?

24 A It doesn't show who the check was written to.

25 It indicates it was deposited in the Tina Investments

1 gwds 13 Steinert - direct

2 Q And there is nothing indicating a change of
3 that in the period covered by your chart?

4 A That's correct.

5 Q Indeed --

6 MR. JANIS: Your Honor, I object to that. There
7 is nothing in the bank records.

8 THE COURT: Please. You can make your argu-
9 ment at another time. You don't have to get in your point.
10 Your point was not the question. It is another point.

11 MR. JANIS: I think the question was misleading,
12 your Honor.

13 THE COURT: I don't think it was misleading
14 at all. I think your statement is inappropriate.

15 Q And, indeed, there was introduced in this
16 case as Defense Exhibit K an agreement relating to Jefferson
17 Retread showing the participation of Mr. Arnold Nelson, was
18 there not?

19 A Yes, sir.

20 Q And that was dated March 17?

21 A I believe it's the 7th, Mr. Rakoff.

22 Q I am sorry, the 7th.

23 And there was also introduced into evidence as
24 Defense Exhibit O an indemnification agreement between
25 Sandra Zucker and Arnold Nelson relating to Jefferson

1 gwds 14 Steinert - direct

2 Retread, was there not?

3 A Yes, sir.

4 Q And the date on that had been typed out as
5 April and then 1973 and then there is a notation that
6 Mr. Zucker said he thought it was just a slash or something
7 of that kind?

8 THE COURT: April, 1973, is that what he was
9 testifying to?

10 THE WITNESS: It looks like April slash.

11 MR. JANIS: May I inquire?

12 THE COURT: Yes.

13 VOIR DIRE EXAMINATION

14 BY MR. JANIS:

15 Q Is that slash how a lot of people write one?
16 Do people write one with a slash, sir?

17 A I am not an expert on handwriting, Mr. Janis.

18 Q Isn't it a fact it looks like April 1? There
19 is an April 1 there, isn't there?

20 THE COURT: We will leave it to the jury.

21 MR. JANIS: May we give it to the jury, this
22 exhibit?

23 THE COURT: We will give it to the jury. The
24 point is in both March and April Mr. Mahler's name appeared
25 on papers having to do with Jefferson Retread.

1 gwds 15 Steinert - direct

2 Is that correct?

3 THE WITNESS: That is correct.

4 BY MR. RAKOFF:

5 Q One last thing about this exhibit and then we
6 will pass it to the jury.

7 This refers in this exhibit to Mr. Nelson's ownership
8 of Jefferson Retread stock, does it not?

9 A Yes, it does.

10 THE COURT: What is the reference?

11 THE WITNESS: "The undersigned purchaser of
12 two shares of Jefferson Retread Manufacturing Corporation
13 from Arnold Nelson hereby agrees to indemnify the said
14 Arnold Nelson."

15 MR. JANIS: May I inquire of Mr. Steinert
16 another question?

17 MR. RAKOFF: He is not cross-examining.

18 THE COURT: Does it have to do with the chart?

19 MR. JANIS: It is a question Mr. Rakoff just
20 asked.

21 THE COURT: That you will save for cross-
22 examination. Otherwise we will have the trial in a shambles.

23 MR. RAKOFF: I will pass it to the jury, your
24 Honor.

25

1 hpds 9 Steinert - direct
2 Witt group and turned over \$36,000 to Industries Internationa
3 He kept five, he gave five to Currie and five to Ubben.

4 Q The final box at the top shows that certain
5 amounts came to these accounts from International Industries
6 itself, is that right?

7 A That's correct.

8 Q And those total up to \$27,200, so far as these
9 accounts are concerned?

10 THE COURT: To what?

11 Q Excuse me, to \$42,200?

12 A Yes, sir.

13 Q Of which \$27,200 went into one account and
14 \$15,000 into the other?

15 A That's correct.

16 Q Incidentally, the particular accounts that
17 are dealt with on this chart are in the name, in the personal
18 account of S.U. and in the account of U.P.

19 Would you show us the monies summarized in the top
20 boxes.

21 THE COURT: Before that, is it a correct
22 reading of this chart that the deposits that you are
23 accounting for are the four boxes at the top of the chart,
24 the two large ones and the two small ones? Is that all of
25 the money that you have accounted here for?

1 hpbr 13 Steinert-direct

2 show the entire distribution of Mr. Greenberg's stock, is
3 that correct?

4 A That's correct, Mr. Rakoff.

5 THE COURT: Just a minute. The bottom line
6 of all this is that the money went into Anted Vending,
7 \$85,388, which in turn was distributed into Jefferson
8 Retread for \$25,000, and \$30,000 wound up in Mr. Ubben's
9 company, Tina Investment Company. I don't understand from
10 the chart that you have here what happened to the \$85,000.

11 THE WITNESS: Your Honor, 85,000 went into the
12 Chemical Bank account of Anted Vending. We only traced
13 down 25,000 and then the check that went to Mr. Ubben, your
14 Honor, that's what we were interested in.

15 BY MR. RAKOFF:

16 Q Mr. Steinert, do I understand then as best you
17 were able to ascertain, the rest of the money remained
18 initially with Anted Vending?

19 A Or I can't trace the balance where it went
20 to.

21 Q And that was Mr. Mahler and Mr. Zucker's
22 account?

23 A That is right.

24 Q And \$30,000 wound up with Tina Investment
25 of which 25,000 of that 30,000 came from this 85,000

1 hpbr 16 Steinert-cross

2 time.

3 (The jury left the courtroom.)

4 (Recess.)

5 CROSS EXAMINATION

6 BY MR. JANIS:

7 Q Mr. Rakoff -- excuse me.

8 Mr. Steinert you have been called as a
9 summary witness, is that correct?

10 A Yes, sir.

11 (Continued on next page.)

1 qwhr 1 Steinert-cross

2 Q And that was the purpose of your testimony, to
3 summarize the evidence to the ladies and gentlemen of the
4 jury?

5 THE COURT: The purpose of the testimony is what
6 appears to be the purpose from the evidence given and the
7 Court permitted his testimony to be given. Go from
8 that.

9 Q The charts you prepared were summary charts,
10 is that correct, sir?

11 A Yes, Mr. Janis.

12 Q And were those charts based upon documents,
13 testimony or both?

14 A Documents mostly, sir. Occasionally testi-
15 mony.

16 Q Occasionally testimony?

17 A Yes, sir.

18 Q Were those charts prepared before or after the
19 testimony on which they were based?

20 A Before.

21 Q When were the charts prepared, in fact,
22 Mr. Steinert?

23 A 801 through 805 were prepared six months ago..
24 805-A and B, 806, 807 and 808 were prepared within the
25 last month.

1 gwds 11

Steinert - recross

2 high 3s.

3 Q Mr. Steinert, it would be fair to say, then,
4 that a substantial number of public shareholders, individuals
5 and corporations, of Bell-Ko made a substantial amount of
6 money once the merger was completed, is that correct?

7 A From the sale of the stock, yes.

8 MR. JANIS: I have no other questions.

end
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12 (Continued on next page)
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1 hpds 1 Steinert - recross/redirect/
recross

Wahler

2 THE COURT: Was it because the stock was in
3 the pink sheets and was tradable that a market price was
4 established?

tk3A

pm

5 THE WITNESS: Absolutely, your Honor. There
6 was no market before that.

7 REDIRECT EXAMINATION

8 BY MR. RAKOFF:

9 Q Mr. Steinert, the only stock that was offered
10 for trading by anyone was former Bell-Ko stock?

11 A You mean sold by the --

12 Q On the over-the-counter market.

13 A Yes.

14 RECROSS-EXAMINATION

15 BY MR. BLACKSTONE:

16 Q Mr. Rakoff had this figure of \$151,396, and
17 this constituted the private investment excluding the loan
18 into Industries that was raised and the 178,000 that went
19 into Industries, leaving 151,396, is that correct?

20 A Yes, sir.

21 Q Of that, \$15,000 was transmitted by Mr. Dowell
22 to Mr. Herman, is that correct?

23 A Yes.

24 Q And that didn't go to Mr. Ubben, is that
25 correct?

1 gwbr 1 Hecht-direct

2 C H A R L E S J. H E C H T, called as witness
3 on behalf of defendant Mahler, having been first duly
4 sworn, testified as follows:

5 THE WITNESS: My business address is
6 Suite 1740, 60 East 42nd Street, New York, New York.
7 Home address: is 114 Burr's Lane, Dix Hills, New York 11746.

8 DIRECT EXAMINATION

9 BY MR. JANIS:

10 Q Mr. Hecht, would you tell us your age, please?

11 A 38.

12 Q Are you married?

13 A Yes.

14 Q Do you have any children?

15 A Two.

16 Q Are you an attorney, sir?

17 A Yes, I am.

18 Q Did you receive a bachelor's degree?

19 A Yes, I did, at Cornell in 1961.

20 Q And a law degree?

21 A At Cornell Law School, 1963.

22 Q After your graduation from law school in 1963

23 did you engage in the practice of law in New York City?

24 A Yes, I did. I went in the Army first --

25 THE COURT: He didn't ask you that. Just answer

1 qwbr 2 Hecht-direct

2 the questions.

3 A Yes, for two years and then I went down to
4 Washington.

5 Q Did you serve as an attorney in the Army as
6 well?

7 A No, I didn't. I was an infantry officer.

8 Q You said you went to Washington, is that cor-
9 rect?

10 A Yes.

11 Q Who did you work for in Washington?

12 A I was an attorney for the Division of
13 Corporation Finance.

14 Q And of what agency is that?

15 A Securities and Exchange Commission, 500 North
16 Capitol Street, Washington, D.C.

17 Q Were you a staff attorney?

18 A Yes, I was.

19 Q What dates did you work at the Securities and
20 Exchange Commission?

21 A 1967, 1968 and I think the first three
22 months of 1969.

23 Q You left in 1969?

24 A Yes.

25 Q After you left the Securities and Exchange

1 gwbr 5 Hecht-direct

2 Q Did you have occasion to speak to him when you
3 first agreed to represent him about the background?

4 A Yes, I did.

5 Q Did you ask him if he ever had any trouble with
6 the SEC?

7 A I asked him generally -

8 THE COURT: Just answer the question.

9 A Yes.

10 Q And did he give you a response?

11 A Yes, he did.

12 Q What was his response?

13 A He explained to me that he had been enjoined
14 by the SEC and it was done under his name Mahler and was
15 called Broadwall Securities, and I check the case, and
16 he also said that he had a prior criminal conviction
17 back in the mid '60s relating to payments to brokers.

18 Q Notwithstanding that or after you learned that
19 you agreed to represent Mr. Mahler?

20 A Yes. I reviewed the case. So long as he dealt
21 with me in a proper manner I had no problem.

22 Q Tell us briefly about the type of business --

23 THE COURT: Were you in the SEC when these
24 cases were pending?

25 THE WITNESS: No, not at all, your Honor.

1 gwbr 6

Hecht-direct

2 Which case?

3 THE COURT: The case against Mr. Mahler.

4 THE WITNESS: No. I understand

5 it was a completely different office out of New York and I was
6 down in Washington in corporate finance.

7 THE COURT: You were in corporate finance in '67,
8 68 and '69?

9 THE WITNESS: Yes.

10 THE COURT: And you say your division had nothing
11 to do with the case?

12 THE WITNESS: Against him, no. It is not an
13 enforcement division.

14 THE COURT: I know what kind of a division it
15 is. I ask you whether you personally had any connection
16 with it.

17 THE WITNESS: No, I had never heard of him.

18 Q Mr. Hecht, just to clear that up, you were
19 operating in Washington, is that correct?

20 A Yes.

21 Q These cases were brought in New York, is that
22 right?

23 A That's my understanding.

24 Q They were brought in 1965, is that correct?

25 A It is reported in the case books that is when the

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2 case was actually tried. I don't know when it was
3 brought.

4 Q That was at least two years or so before you
5 began to work for the SEC?

6 A About a year and a half.

7 Q Would you tell us basically what sort of
8 relationship, what sort of work you did with Mr. Mahler?

9 A I represented his firm in connection with
10 its role as a finder in certain mergers and acquisitions, and
11 when requested I reviewed the proxy statements, prepared them
12 and held the corporate meetings in connection with the
13 merger.

14 Q Did you work on corporate reorganizations?

15 A Yes, I did.

16 Q Would you tell the ladies and gentlemen
17 of the jury what a corporate reorganization is?

18 A In layman's terms, it is basically where two
19 corporations combine to form one corporation which were
20 unrelated before and decided to do business together.

21 Q And did you have any occasion to work on
22 what are known as shells?

23 A Yes. I used to call them dormant public
24 companies.

25 Q Would you explain to the ladies and gentlemen

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2 do not have an operating history, and they disclose all the
3 salient facts to the investor and the investor theoret-
4 ally is supposed to read that prospectus and read that docu-
5 ment before purchasing the stock.

6 THE COURT: Is that the only limitation on a
7 Regulation A?

8 THE WITNESS: I haven't gotten to Regulation
9 A, your Honor.

10 A Regulation A is technically an exemption from
11 registration for small issues but you follow a similar
12 procedure.

13 MR. RAKOFF: Excuse me. If this witness is
14 being offered as a legal expert, your Honor, then I do object
15 to that offer.

16 THE COURT: Well, listen to his testimony.
17 Up to now he has been describing himself.

18 Q Would you continue?

19 A Regulation A offering is technically an exemption
20 but you follow the same format. You file a notification
21 with the regional office and included in that is an offering
22 circular. And that's a document that describes the
23 relevant facts about a company to prospective investors,
24 and a Regulation A can either be a new company, a start-up
25 situation, or it can be an existing company, and at that

1 gwbr 13 Hecht-direct

2 Q And that was legitimate, is that right?

3 A It could be. It depends on the circumstances.

4 Q Do you know of any public corporation that
5 went public that way?

6 A A classic case is Gulf & Western, which was New Jer
7 sey Zinc which went public as a privately held zinc company,
8 purchased a shell, and I understand Boise Cascade went
9 public that way.

10 THE COURT: What were the assets of those
11 companies before they went public that way?

12 THE WITNESS: New Jersey Zinc I think at that
13 time their assets were well over a million. Boise Cascade
14 I think at one time was much smaller when they did it that
15 way.

16 Q And these were under Rule 133, is that cor-
17 rect?

18 A It is my understanding, yes.

19 Q When you first began to represent Mr. Mahler,
20 was Mr. Zucker an employee or an associate or a partner of
21 his?

22 A Not to my knowledge.

23 Q And would you please describe exactly the type of
24 work that you and Mr. Mahler did together?

25 A Well, at that stage, Arnie would come to me

1 gwbr 13 Hecht-direct

2 phone and then he would try to get the information for me.
3 We did this long before we ever sat down to prepare a
4 proxy statement.

5 Q Were you careful to follow these checklists?

6 A Of course.

7 Q Was Mr. Mahler?

8 A I found him very careful.

9 THE COURT: What was the date of your last
10 professional business with Mr. Mahler?

11 THE WITNESS: Basically, your Honor, I'd
12 say around November of '72. We parted company in
13 October, but there were some things that I started on
14 that I wanted to finish up.

15 Q Mr. Hecht, during the period of time that you
16 worked with Mr. Mahler, how would you describe his work
17 habits?

18 A From an attorney's point of view, he worked very
19 hard. We worked on Sundays, very often at nights.
20 The man would work like 20 hours a day. We would work
21 on Sundays if it was required.

22 Q Did there come a time when Mr. Mahler began to sit
23 down?

24 A There came a time when he advised me --
25 I'd say around the late summer of '72 he started to put

1 gwdr21 Hecht-direct

2 the jury what transpired?

3 A I asked Teddy if he ever had had problems
4 with the SEC and Teddy said he hadn't.

5 Q He had not?

6 A He had not.

7 Q Did you have occasion to check on that?

8 A Yes, I did.

9 Q And did you find that his response was truth-
10 ful?

11 A No, I found his response was not truthful.

12 THE COURT: What did you do about it?

13 THE WITNESS: I called up -- I called up the
14 SEC and I asked --

15 THE COURT: What did you do about the fact
16 that it wasn't a truthful response?

17 THE WITNESS: I started checking through the
18 SEC files. First I called the SEC and asked some of my
19 friends if they heard of him. They advised me they
20 had, he had a prior problem. Then I found it was
21 in this court or the Eastern District, and I went down
22 and got a copy of the consent injunction and the com-
23 plaint and looked it over entirely, because at first I
24 tried to get it from him, your Honor. I said "I heard
25 there is a problem. Would you bring the papers to me so

1 gwbr 22

Hecht-direct

2 I can review them?"

3 THE COURT: What month was this?

4 THE WITNESS: I would say this was probably
5 September of 1972. When I couldn't get the papers
6 from him and went down and read the papers, I advised
7 Arnie that I made a decision that basically if he was
8 going to retire from the business he would have to get
9 another attorney.

10 Q You said you checked on Mr. Zucker with the
11 SEC?

12 A Right. And when I couldn't get the informa-
13 tion from Ted, who promised -- I asked Ted to bring in what
14 he had consented to and a copy of the complaint and the
15 name of the case, and when I couldn't get the information
16 from Ted I looked around myself and checked the case and
17 found the case in the federal records and read over the
18 material.

19 Q In your dealings with Mr. Zucker prior to the time
20 you learned about this prior to the SEC problem that he had
21 and after that time, how did you find his work habits
22 to be?

23 A He worked hard, but I always found that he
24 was trying to shortcut and cut corners and all he was
25 interested in was getting the proxy out and why go verify

1 gwbr 28 Hecht-direct

2 O When you were there, did anything unusual
3 happen?

4 A Well, they permitted us to look at certain
5 records in the morning.

6 Q When you say "they," who are you referring to?

7 A There was Mr. Zucker --

8 THE COURT: What has that to do with this case?

9 MR. JANIS: I think it will become apparent
10 in a moment, your Honor.

11 THE COURT: It had better.

12 A And a Sidney Weissberg who is a lawyer with
13 Lipkin & Weissberg.

14 Q What, if anything, happened that was unusual?

15 A There came a dispute when they refused to give
16 us the records, and I suggested to the other lawyer that we
17 go to court and get a clarification of the court's order
18 because I felt it meant -- I believed it meant one thing and
19 he didn't agree. So I started to walk out and Arnie
20 was with me and Ted came out in the hall and Ted said to Arnie,
21 "Look, I don't like you nosing around Nationwide and when this
22 Industries thing comes up I am going to get even."

23 Arnie got a little angry and I got him outside
24 the plant and I asked him what this Industries thing was,
25 and he explained it to me.

1 gwbr 30

Hecht-cross

2 MR. RAKOFF: Your Honor, if Mr. Blackstone
3 has nothing --

4 MR. BLACKSTONE: I have no questions.

5 CROSS EXAMINATION

6 BY MR. RAKOFF:

7 Q Mr. Hecht, when you first went to work for the
8 various companies that Mr. Mahler was putting together,
9 the two companies that he had and so forth, he told you
10 about one of his prior convictions, is that it?

11 A Well, he explained -- he didn't --

12 THE COURT: Answer the question.

13 THE WITNESS: He didn't say prior conviction.
14 He said he had a prior criminal problem when he had been sen-
15 tenced and he spent a short time in prison. He explained
16 the facts surrounding the conviction. I don't know
17 whether it was one or two.

18 Q Stock fraud?

19 A It was related to stocks. It wasn't a stock
20 fraud the way I understand it.

21 Q It was not a stock fraud?

22 A I understood it was the payment of cash to
23 brokers was the substance of the government's allegations.
24 That's what he explained to me.

25 THE COURT: Is that a stock fraud?

1 gwbr 31 Hecht-cross

2 THE WITNESS: I don't know, because I don't
3 know the circumstances.

4 THE COURT: You don't know whether payment
5 to brokers is a stock fraud?

6 THE WITNESS: It could be, your Honor, if it
7 is a payment to your employees. That's the way he
8 explained it to me. He was paying some of his employees in
9 cash instead of checks.

10 THE COURT: Is that a stock fraud?

11 THE WITNESS: No, I don't know if that is a
12 stock fraud. That may be a fraud on the taxes with
13 respect to the employees not reporting income.

14 Q So all he said is he was paying his employees
15 in cash instead of checks?

16 A He didn't say he was paying. He said the
17 allegations in the government suit was that he used cash
18 to pay brokers, some of whom were his employers.

19 Q He didn't even admit that?

20 A Well, my job -- I didn't ask him whether he
21 admitted it. I just asked what were the circumstances
22 and what was your part in it, and he felt -- he did state
23 to me --

24 Q Excuse me. Did he tell you that he had
25 been convicted of lying under oath?

1 gwds 4

Hecht - cross

2 relationship, if the client is not going to be truthful
3 with you, I think you, as an attorney, are put on notice
4 to watch your step.

5 Q Fair enough. But my question was, there was
6 no finding that he had done anything improper, correct?

7 A Technically, no.

8 Q And technically or any other way, right?

9 A Right, but I still wanted to see the complaint
10 and I wanted an explanation from him on really what happened,
11 and if, in fact --

12 THE COURT: You are volunteering a lot of in-
13 formation that has nothing to do with the question.

14 THE WITNESS: I am sorry, your Honor.

15 Q Unlike a prior conviction which is a finding
16 beyond a reasonable doubt?

17 A That's true.

18 Q You observed Mr. Zucker's work and you didn't
19 care for what you saw?

20 A Basically, yes.

21 Q Incidentally, he was, is it fair to say,
22 Mr. Mahler's gofer?

23 A I would say for certain things, yes, he would
24 get the information for Arnie or do certain things for Arnie,
25 because there was only so much Arnie could do in a 20-hour

1 gwds 7

Hecht - cross

2 THE COURT: Overruled.

3 Q I show you the one that was prepared in connec-
4 tion with HUP and the name of the shell there was M-Tec,
5 and let me ask you, wou'd it have been necessary under the
6 fraud provisions of the securities laws to reveal who
7 controlled the shell corporation if it was in the control
8 of one or more -- one or a few individuals?

9 A With respect to the dormant publicly held
10 company, you should disclose who is the actual record or
11 beneficial owner of at least 10 percent of the stock.

12 THE COURT: In simple terms, just answer the
13 question.

14 Do you have to reveal who is in control of
15 the shell, yes or no?

16 THE WITNESS: Yes, but there is a specific
17 test for control, your Honor, under the law.

18 THE COURT: That is a different question that
19 you haven't been asked.

20 You have to reveal who is in control?

21 THE WITNESS: Yes, of the shell.

22 Q You are saying the test would be 10 percent?

23 A Normally it is, but there are some special
24 rules of what is called attribution if there are two or
25 more related parties.

1 gwds 8

Hecht - cross

2 Q Sometimes two people have to be considered
3 as one?

4 A Yes.

5 Q So if two held 10 percent you had to reveal
6 that?

7 A Yes.

8 Q If Mr. Mahler and Mr. Zucker controlled 50
9 percent of the M-Tec shell, that would have to be revealed?

10 A If it were true, yes.

11 Q And, indeed, if that wasn't revealed, it would
12 be a violation of the fraud provisions of the securities
13 laws?

14 A In particular 10(b)5 of the '34 Act. There
15 is always a question of materiality.

16 THE COURT: Just answer the question. Would
17 that be a violation of the fraud provisions if it was
18 material?

19 THE WITNESS: If it was material, yes.

20 Q Is there any real question in your mind that
21 that is material?

22 A Well, I could see in this situation where
23 some people could say it would not be material if, after the
24 merger was consummated, his net ownership was less than
25 2 percent or 3 percent.

get you to address my question.

Turning to the Bell-Ko proxy statement, the same rules would apply? This is on another shell merger under 133, right?

A The same legal principles apply to any acquisitions under Rule 133.

Q And so if Mr. Maher and Mr. Zucker and Mr. Ubben controlled 61 percent of all the Bell-Ko stock, that ought to be revealed?

A Even if it's before the merger, yes.

Q And if, after the merger, Mr. Mahler and Mr. Zucker and Mr. Ubben together owned 40 or more percent of the new company, that fact would have to be revealed?

A Are you saying as a group?

Q Yes.

A Yes.

Q Now, let's break it down individually.

Mr. Mahler and Mr. Zucker ought to be considered as one, should they

A It depends on the circumstances.

Q Under the circumstances of their relationship in the deals that you observed that they worked on, should they have been considered as one?

MR. JANIS: Objection, your Honor.

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THE COURT: The objection is overruled.

Didn't you say they were 50-50 partners?

THE WITNESS: On certain transactions, yes.

THE COURT: On the transactions that Mr. Zucker brought in?

THE WITNESS: On transactions Mr. Zucker brought in, the way they worked it is everything was taken in the name of Acquisitions and Investors and then it was disclosed that half the consideration was being transferred to a company controlled by Theodore Zucker, either Scrip Management or Denton Equities.

Q That is the way it ought to be revealed, right?

A I would think so.

Q And that is the way it ought to have been revealed here, if that was the same situation?

A I haven't reviewed this. I don't know the situation.

Q What about if Mr. Ubben all by himself were to own 25 percent of all or control 25 percent of all the stock in the new company. Would that have to be revealed?

A Yes.

Q No question of that?

A No question.

Q If the purpose of one of these shell deals

1 gwds 14 Hecht - cross

2 of them as officers and directors and as part of that action
3 sued for corporate waste.

4 Q And how much did he sue for?

5 A The corporate waste alleged in the complaint
6 was around \$500,000.

7 Q And you were his attorney in all that, is
8 that right?

9 A Yes, I was.

10 Q In fact, you are still his attorney today in
11 the further proceedings of that case?

12 A In both cases, yes.

13 Q And you took that as a contingent fee matter?

14 A Well, not exactly. In corporate derivative
15 actions, as far as the initial action --

16 THE COURT: Did you get paid a fee or didn't
17 you?

18 THE WITNESS: On the inspection case, yes.

19 THE COURT: How about the other case?

20 THE WITNESS: You are paid by the corporation
21 under the law.

22 THE COURT: Did you get paid a fee by Mr. Mahler?

23 THE WITNESS: On the second action, no.

24 Q And your fee was to come if you recovered any
25 of those monies?

1 gwds 15 Hecht - cross

2 A From the corporation.

3 Q You would get some percentage of that?

4 A It is set by the Court.

5 Q But instead you lost that proceeding, did you
6 not?

7 A No, we won one and lost the other.

8 Q What happened to the money one?

9 A The money one is on appeal.

10 Q You lost it, didn't you?

11 A At this stage --

12 THE COURT: What are you appealing from, a
13 win or a loss?

14 THE WITNESS: A loss.

15 Q The Court permitted certain costs, is that
16 right?

17 A As provided for by statute.

18 Q And you are now taking that up on appeal?

19 A Yes.

20 Q You aren't very happy about that loss, are
21 you?

22 A No lawyer is when he feels his client is right.

23 MR. RAKOFF: Thank you.

24

25

1 gwds 20

Hecht - redirect

2 Was that a contingent fee case?

3 A It is in a way. If you are successful, then
4 you bring a motion and the Court awards you a fee based on
5 your efforts and your benefits to the corporation.

6 Q And it is the Court that decides upon your
7 fee, is that it?

8 A Yes.

9 Q Just as a Court decides upon sentence, is that
10 right?

11 A Yes.

12 THE COURT: You mean out of a pot you create,
13 if you create one?

14 THE WITNESS: Yes, the Court awards a fee.

15 THE COURT: If there is no pot, you get zero
16 fee?

17 THE WITNESS: Right, except Mr. Nelson and
18 I had an arrangement if for some reason Mr. Zucker would buy
19 him out, I would get a percentage of the sales price of
20 it.

21 THE COURT: That again would be a pot?

22 THE WITNESS: Yes.

23 Q You testified you lost a case and you won a case.
24 The one you won has been upheld by the Court of Appeals?

25 A No, the Appellate Division, Second Department.

1 gwds 22

Hecht - redirect

2 principals, then you probably would have to disclose it.

3 Q You recall Mr. Rakoff asked you about Mr. Zucker
4 when he first started to work for Mr. Mahler. He asked
5 you if Mr. Zucker was a gofer. Do you recall that question?

6 A Yes.

7 Q And you stated that in fact he was a gofer?

8 A That was my understanding.

9 Q During the course of your relationship with
10 Mr. Mahler and Mr. Zucker, do you know whether Mr. Zucker
11 took on added responsibilities?

12 A I don't know if he took on added responsibility.
13 He took a greater participation from my point of view, what
14 I did. He was in my office more and worked more directly
15 with Arnie in actually preparing the documentation or the
16 verification.

17 Q Would it be fair to say that by the time you
18 split Mr. Zucker was no longer a gofer?

19 A Yes.

20 Q And would it also --

21 THE COURT: What is that word -- gofer?

22 MR. JANIS: Gofer. Mr. Rakoff used that word.

23 THE COURT: You are using it now. What does
24 does it mean?

25 Q What do you understand gofer to mean?

1 gwds 24 Hecht - redirect

2 Q How about the other proxy statement?

3 A I had nothing to do with it. The first time
4 I saw either of them was today. I think once someone
5 offered to have me look at the Bell-Ko thing six months ago
6 and I said, no, I don't want to look at it.

7 THE COURT: Who offered to let you look at it?

8 THE WITNESS: Mr. Nelson wanted to discuss
9 certain legal aspects of the case.

10 THE COURT: You weren't calling him Nelson
11 six months ago, were you?

12 THE WITNESS: I have always called him that.

13 Arnie mentioned it and wanted me to look
14 over certain things. I said I would rather not, then if
15 people ask me questions I can look at it objectively.

16 Q Mr. Hecht, I have shown you what has been
17 introduced in evidence in this case as Government's Exhibit
18 39, and that is a notice of meeting of stockholders in
19 M-Tec Industries.

20 A I have it here.

21 Q That is a proxy statement dealing with the
22 HUP-M-Tec merger, is that correct?

23 A Yes, it is.

24 Q Do you know what a disclaimer is? Is that
25 a term of art?

A Yes, it is. It could vary depending on the industry and the purpose of the document.

Q What is a disclaimer as you understand it?

A Well, a disclaimer is really, to put it in layman's terms, it is a copout, you are not responsible, put in writing.

Q And that is so people reading a document will understand it, is that correct?

A They should if it is a properly worded disclaimer.

Q Let me refer you to the second page of the proxy statement, the fourth paragraph down.

A Is that numbered page 1 or 2?

Q Page 2.

A I have it.

Q Does that statement say, and I quote:

"As stockholders may be aware, M-Tec has been totally inactive for some time. Any revival or renewed activity by M-Tec is futile without further infusion of capital or business, which does not appear available."

A That is basically what the fourth paragraph says.

Q Does the last paragraph say:

"All information with respect to HUP and its sub-

sidiaries has been supplied to your company by the management of HUP and your company is in no position to warrant the accuracy of the information contained herein."

A Yes, that is what the last paragraph says.

Q Page 3, the fourth paragraph, does that state:

"However, the company operates in a highly competitive industry and there are many established companies presently offering competitive products to those offered by the company and many of these companies have greater financial resources than the company."

Is that also present there?

A Yes, it is.

Q On page 4, the third paragraph down, does it state, and I quote:

"However, franchising motels is a highly competitive business in which there are a number of outstanding operators and any forecast of future successes would be highly speculative."

A That's what the third paragraph says.

Q Then the last paragraph on page 4, does it say as follows:

"It should be noted that any expansion of its subsidiaries as contemplated by HUP would in all probability

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Hecht - redirect

2 require substantial investments by HUP necessitating
3 additional financing and that there is no assurance that
4 such financing will be available to it in the future. It
5 should be clearly understood that any of the aforementioned
6 expansion programs would be dependent upon the ability of
7 the company to obtain additional financing or capital to
8 the extent needed for such expansion programs."

9 A That's what it says.

10 Q On page 5, the first paragraph, does it state
11 as follows --

12 MR. RAKOFF: Your Honor, I think that using
13 this witness to read the document when he can read it
14 himself is wrong.

15 THE COURT: Overruled.

16 Q On page 5, the first paragraph, does it state
17 as follows:

18 "However, there is no assurance that HUP can obtain
19 additional financing or, if obtainable that it can be done
20 on terms favorable to the company. There is no assurance
21 that HUP can increase the volume or profits of its subsidi-
22 aries or expand on economically advantageous either in its
23 capacities or into programs it is investigating and intends
24 to pursue. Any forecast of future success at the present
25 time would be highly speculative."

1 gwds 28

Hecht - redirect

2 A Yes, I read that.

3 Q The third paragraph on page 5 states, and

4 I quote:

5 "The foregoing description of the proposed corporate
6 activities is almost exclusively predictive and is based
7 on numerous assumptions of which there can be no guarantee
8 of accuracy."

9 A That's what the sentence says.

10 Q And those statements that I have read to you
11 are all disclaimers, is that right?

12 A They are not really disclaimers. What they
13 are is that they theoretically alert the investor that in
14 considering the securities of the company after the re-
15 organization, that in this particular case HUP properties
16 doesn't have the internal financing and would be required
17 to get additional financing.

18 It's really not a disclaimer. It's really saying
19 to the public, "Look, the company has certain problems in
20 certain areas and there is no assurance that they will be
21 able to solve those problems."

22 Q Does it not put the public on notice that
23 this may in fact be a poor investment?

24 A Well, that's a value judgment. You would
25 have to look, and I haven't read it, this is the first time

1 gwds 29

Hecht - redirect

2 I have looked at the transaction, you have to look at the
3 entire statement. You would have to look at their financial
4 statements, you would have to look at their income state-
5 ment. Maybe this company has a substantial balance sheet
6 so they could get financing. You would have to look at the
7 whole document.

8 THE COURT: Suppose it didn't have substantial
9 assets; suppose it was virtually insolvent. Would it be
10 appropriate to have those statements in a proxy?

11 THE WITNESS: Yes, it would, because you ~~are~~
12 putting them on notice.

13 THE COURT: You think those things that have
14 been read to you is notice you are dealing with two in-
15 solvent companies?

16 THE WITNESS: I didn't say that, your Honor.
17 I say you look at the balance sheet.

18 MR. BLACKSTONE: Your Honor, I object to your
19 question. It assumes a fact in issue.

20 THE COURT: I am not referring to this particu-
21 lar statement. I am asking a question as to what this
22 witness would regard to be appropriate to say if he knew
23 that the two companies being put together were virtually
24 penniless.

25 THE WITNESS: I think I would put it I did

1 gwds 30

Hecht - redirect

2 it a little differently. I put up a risk factor.

3 THE COURT: Nevermind how you did it. I
4 ask you whether thos disclaimers are appropriate under a
5 Rule 133 filing with the intention to immediately trade
6 stock.

7 THE WITNESS: No, if you have the intention
8 to immediately trade stock they wouldn't be, because the
9 stock should have some relation to the value of the under-
10 lying companies, and if the companies are, for all intents
11 and purposes, valueless, then there is no basis for the
12 stock trading at a substantial price.

13 Q Mr. Hecht, let me ask you a related question.

14 If you are a shareholder in a public corporation that
15 is dormant, has no assets or virtually no assets, what's
16 in it for you to approve a merger with a private company?

17 MR. RAKOFF: I object to that.

18 THE COURT: Sustained.

19 Q Are there any advantages, Mr. Hecht, to a
20 dormant public corporation merging with a private corporation?

21 A There could be a substantial benefit to the
22 existing stockholders.

23
24
25 (Continued on next page)

end 21
tk4B 22
pm

1 hpb 1

2 MR. SHARP: Your Honor, is there any way I can
3 persuade your Honor to give us the whole day off Monday?

4 THE COURT: I am delighted to know you are
5 speaking for the jury. The answer is we proceed at
6 9:30 on Monday.

7 (The jury left the courtroom.)

8 THE COURT: I should tell counsel that the
9 deadline for the submission of request to charge is
10 Monday morning so that I may have an adequate opportunity
11 to prepare a charge for the jury.

12 MR. BLACKSTONE: May I hand your Honor
13 defendant Ubben's right now?

14 THE COURT: If you don't want to think
15 them over, over the weekend and they are final, yes, with
16 pleasure.

17 MR. BLACKSTONE: I got too many things to do this
18 weekend to revise it, your Honor..

19 THE COURT: Has the government furnished a
20 copy of its requests to charge? I hope that each
21 side will examine the other side's requests and be prepared
22 to advise the Court to what extent, if any, you disapprove
23 or approve of the respective requests.

24 MR. RAKOFF: Yes, we did furnish them.

25 THE COURT: I expect to receive from the

1 hbr 2

2 government a statement in brief form not to exceed two
3 pages of the contentions of the parties and a similar
4 statement from the defendants, which I will consider for
5 an inclusion in the charge.

6 I don't now say whether I will or will not
7 include them in the charge but I always like to be ready.

8 MR. SHARP: Your Honor, at this point
9 as counsel for Mahler, I would like to object to the
10 Court's interceding with questioning during the course of
11 testimony of a number of witnesses both today and yester-
12 day. I have a feeling that maybe some people on the jury,
13 some of the jurors feel that the Court is deciding one way or
14 another with the testimony, and they may believe that the
15 Court has made some kind of judgment in this case. I say
16 that with some real reluctance and with all deference to
17 the Court also and only because I am concerned the jury not
18 be misled. I don't believe your Honor has made any
19 judgment.

20 I suggest at times by asking questions which
21 I am sure the Court is asking for purposes of clarification
22 the jury might believe that your Honor is adopting at this
23 point in the case one side or the other, and for that
24 reason I would like to make that record and also make that
25 objection, your Honor, and ask that in the future to the

1 hpbr 3

2 extent that the jury might be misled by your Honor's com-
3 ments, that they not be made, your Honor.

4 THE COURT: Now I want to say to you, Mr. Sharp,
5 that your client has had extraordinary latitude in the
6 presentation of a witness to expound the law, which is not
7 the function of an expert at all. And, it was only to
8 contain what might seem to be an excess of ~~Ex~~-pression
9 with respect to Rule 133 that questions were asked by the
10 Court so far as that witness was concerned. My own
11 recollection of the somnolent attitude I have adopted in
12 the past six days toward this case belies the suggestion
13 that I have even taken notice, leave alone participated
14 in much ^{of} what has been going on. You may be assured,
15 however, that nothing has escaped me.

16 MR. SHARP: Yes, your Honor, I do believe that,
17 and I was very concerned about even making this suggestion
18 and I think your Honor knows that I have been and I made
19 it with some reluctance and only because of the im-
20 pression the jury might get and not because of anything
21 I think the Court has decided.

22 THE COURT: You should direct your sensitivity
23 to the representation of your client to the fullest
24 and I will assist you in every day.

25 MR. SHARP: I appreciate that, your Honor.

1 hnds 1

1241

2 United States of America

3 -vs-

76 Cr.1047
(MP)

4 Arnold Nelson Mahler, et al.

5

6

New York, New York
October 24, 1977--9:40 a.m.

7

8

9

(Trial resumed)

10

(Jury not present)

T1

11

THE COURT: One of the jurors has not yet

12

arrived.

13

MR. JANIS: Good morning, your Honor. I have

14

a couple of preliminary matters.

15

Number one, I have given the clerk a copy of

16

our request of charge and I have asked him to transmit it

17

to you.

18

Number two, your Honor, over the weekend

19

Mr.Sharp and I had occasion to discuss the matter he raised

20

with you on Friday afternoon and that was the matter of the

21

Court unintentionally giving the jury the impression that

22

he had sided with one side or the other.

23

We discussed it at length and thought about

24

the witnesses who have testified, both for the government

25

and for the defense, and we concluded that our recollection

1 hpds 2

2 of the record has been that the Court has interceded on
3 frequent occasions during the testimony of witnesses and
4 that while we know the Court does not intend to give the jury
5 the impression, the impression we have is that on the frequent
6 occasions that the Court interceded during our cross-examina-
7 tion of government witnesses, we believe the jury got the
8 impression that the Court was attempting to rehabilitate
9 those witnesses or to assist them and that, on the other hand
10 when Mr. Hecht was testifying, the Court interceded --

11 THE COURT: Who?

12 MR. JANIS: Mr. Hecht, the attorney who testi-
13 fied for the defense Friday, the Court interceded frequently
14 during our direct examination.

15 THE COURT: Do you in good conscience say that
16 the testimony of your man was straightforward in all
17 respects during the times that he was corrected?

18 MR. JANIS: I think the witness was truthful
19 and straightforward at all times, absolutely. I have not
20 the slightest doubt. If I did, we wouldn't put him on the
21 stand.

22 THE COURT: I am not talking about whether
23 he was truthful. I am talking about whether he was expressing
24 law as law should be expressed. The thing that I should
25 not have done in the first place was to allow him to testify

1 on the law. What he had to say was something for the judge
2 to deal with and instead of that I found myself swept along
3 with his expressions of opinion in connection with securities
4 law that left something to be desired. His credibility is
5 not at stake.
6

7 MR.JANIS: Your Honor, last week the Court
8 suggested, both through the prosecution and the defense,
9 that the jury didn't understand some of these terms and it
10 would be beneficial to the jury if someone would explain that
11 That was really one of the main reasons Mr.Hecht went into
12 that.

13 THE COURT: Explanation is one thing. That's
14 not what he was doing. I'm not saying it was advertent
15 either. I am saying it was gaps that should not have been
16 left. He wasn't testifying as a fact witness. He gave two
17 versions. One was of the law and the other was as a character
18 witness, in effect.

19 MR. JANIS: I didn't think he was a character
20 witness.

21 THE COURT: You didn't think so?

22 MR. JANIS: No, your Honor. We certainly
23 didn't call him as a character witness for Mr. Mahler.

24 THE COURT: He spent most of the time on that
25 subject.

1 hnds 4

2 What is your point?

3 MR. JANIS: My point is, your Honor, while we
4 don't believe the Court has done this intentionally, we
5 are convinced now that our client's right to a fair trial
6 has been prejudiced.

7 THE COURT: This is standard operating pro-
8 cedure. Nonsense. You made your point, go ahead.

9 MR. JANIS: We believe the jury has the im-
10 pression that the Court has decided this case and conse-
11 quently we are going to ask for a mistrial at this time.

12 THE COURT: Denied.

13 MR. BLACKSTONE: Mr. Ubben wishes to join in
14 the motion for a mistrial.

15 THE COURT: I'm surprised at your, Mr. Blackston.
16 Denied.

17 See if the jurors are ready yet.

18 There are certain things that lawyers who are
19 officers of the court are to be mindful of. One of them is
20 to avoid frivolous applications, particularly when we are
21 dealing with high class lawyers.

22 MR. RAKOFF: Your Honor, while we are waiting,
23 one small matter I would bring to the Court's attention.

24 On the question of these tax being intro-
25 duced, of Mr. Greenberg, I would ask the Court to take a

1 dwbr

Mahler-cross

2 didn't you?

3 A No. I did not. I had answered an advertise-
4 ment that he had in the newspaper without knowing who it was
5 and in a reply to normal advertisements that my office was
6 still answering. I had absolutely no dealings with Mr.
7 Kulekofsky.

8 Q Without knowing who it was?

9 A It was a Wall Street Journal reply box
10 number and my secretary normally answers those without refer-
11 ring each and every ad to my attention.

12 Q Well, didn't you write a letter, "Dear
13 Mr. Kulekofsky"?

14 A I said that the ads --

15 THE COURT: Did you write a letter,
16 "Dear Mr. Kulekofsky:"?

17 THE WITNESS: I did not, your Honor, no. My
18 secretary does.

19 Q She signed your name?

20 A May I see the letter, Mr. Pakoff?

21 Q Did she sign your name or did you sign your
22 name?

23 A If I can see the letter I will tell you who
24 signed it.

25 Q Do you have any recollection?

dwbr

Lahler-cross

Q Well, there is a check here, part of Exhibit 194 already in evidence from your acquisitions and investors' account dated December 11th, to Arnold Nelson. That's you?

A That is correct.

Q And it is signed Arnold Nelson?

A Well, if you would show me the check I can see.

Q Is that your signature?

A Yes, it is.

Q It is endorsed over, Arnold Nelson, took, isn't

it?

A Correct.

Q So you pre-endorsed it, is that right?

A I cannot make out the government date on the back of the check, Mr. Rakoff. Perhaps you can help me.

THE COURT: The question was, did you pre-endorse it?

THE WITNESS: I don't recall, your Honor, I don't recall the check. I can't answer that.

(Continued on next page.)

1 hpds 2

Mahler - cross

2

Q That is your signature, isn't it?

3

A Yes, but it's also proof of the fact that I

4

obviously signed checks when I was not around. January 5th

5

I was not around. I was in Vermont.

6

Q You still don't remember who Peter Asher is?

7

A No, I do not.

8

Q No one else but you had signing rights on this

9

account, did they?

10

A That is my signature.

11

THE COURT: The question was whether anybody

12

else had signing power.

13

THE WITNESS: No, sir, they did not. I was

14

the only one allowed to sign checks.

15

Q Then here is check on March, it looks like

16

14, 1973 to Peter Asher for a thousand dollars. That's

17

your handwriting right through that whole check, isn't it?

18

A Yes, it is.

19

Q I thought you told us that was the date you

20

went away to Greece.

21

A March 14th was the day I did leave.

22

Q Are you sure about that?

23

A Yes, I am.

24

Q Are you sure about that because you say on

25

your passport it is stamped the 15th and that was the day

1 A I said I was doing better than I had done
2 previously. "Well" is a term that you have to describe
3 for me.
4

5 Q In 1964, you started stock frauds, isn't that
6 right?

7 A It resulted in my conviction for stock fraud.

8 Q That wasn't a sort of accidental occurrence,
9 was it?

10 A It was not something, when I formed Broadwall,
11 that was preplanned.

12 Q You started in 1964.

13 A It resulted, I repeat, in my culmination for
14 stock fraud condition.

15 Q Just by a fluke?

16 A No, something that I absolutely did wrong
17 and did incorrectly and I have been found guilty of it and
18 I have pleaded guilty that I did something wrong.

19 THE COURT: Speak into the microphone, please.

20 A (Continued:) It is something I did wrong
21 at that time, was found guilty and I pleaded guilty to
22 something that I did commit a crime at that time, sir.

23 Q What you did was very similar to what you are
24 charged with here, wasn't it?

25 MR. JANIS: Objection, your Honor. Improper

form of impeachment question.

THE COURT: Objection overruled.

A The incident here, Mr. Rakoff, is exactly the opposite of what occurred during that period of time. I have not at any time done what I am accused of in this case and I admitted what I did at that time.

Q You didn't admit it initially, did you?

A No, but I pleaded guilty for something that I have paid for it and I did what I was supposed to have done at that time and I did not do the crime I am accused of in this case. They are not the same.

Q My question is, when you were first accused at that time, you got on the stand and lied, didn't you?

A I was convicted of perjury --

Q Did you --

A It was not on the stand, Mr. Rakoff. It was in the Securities & Exchange Commission for having given false testimony to the Securities & Exchange Commission, which I did.

Q When you were indicted for that, you were tried?

A That is correct.

Q You took the stand?

A Yes.

1 hpds 14

Mahler - cross

1428

2 Q And you lied again, didn't you?

3 A Yes, I did.

4 Q And then you were convicted and sentenced
5 and then you pled guilty in the other stock fraud case?

6 A Which was related to the exact same incident,
7 that's correct.

8 Q Now, wait a minute. There were a number of
9 stocks involved, weren't there?

10 A No, there was Bankers Intercontinental and
11 that was the company I denied paying cash to my salesmen.

12 Q Wasn't there a company named Florida Patsan?

13 A I was not indicted for that and neither was
14 Fiber Craft, which I also pleaded guilty to.

15 Q Coast to Coast?

16 A I was not indicated in that case either.

17 Q That was another stock fraud, wasn't it?

18 A That was a civil injunction. That is correct,
19 another stock fraud.

20 Q In which you participated?

21 A Absolutely.

22 Q Communications Industries?

23 A I don't recall that one at all.

24 Q Edge-O-Tronic?

25 A I don't recall that one.

2 Q Do you remember the question being put to Mr.
3 Hecht:

4 "Q If Mr. Mahler and Mr. Zucker controlled
5 50 percent of the M-Tec shell that would have to be re-
6 vealed?

7 "A If it were true, yes."

8 Q Do you remember Mr. Hecht saying that?

9 A Yes, I do.

10 Q It wasn't revealed, was it?

11 A I did not own 50 percent of M-Tec.

12 Q How much did you own of M-Tec?

13 A Approximately at the time of the reorgani-
14 zation approximately --

15 Q How much did you own of M-Tech?

16 A After or before, Mr. Pakoff?

17 Q There was no M-Tec after, was there?

18 A M-Tec had its name changed with an asset
19 purchase by HUP Industries.

20 THE COURT: What is the answer to how much of
21 M-Tec did you own before the reorganization?

22 THE WITNESS: Approximately 300,000 shares.

23 THE COURT: What was the percentage?

24 THE WITNESS: 200,000 shares, your Honor,
25 and I believe there were a million eight hundred thousand

1 duhr

Mahler-cross

2 it on December 5th.

3 Q That was a signed paper, wasn't it?

4 A It is stated in that agreement on October 5th
5 that -- December 5th, rather that he would issue but never
6 did.

7 THE COURT: Would issue what?

8 THE WITNESS: An option, your Honor, to my
9 firm.

10 THE COURT: Would issue the stock or
11 would issue an option?

12 THE WITNESS: Would issue an option, your
13 Honor.

14 Q I show you Government's Exhibit 75-G already
15 in evidence. That is a letter agreement between you
16 and Industries International saying that you, that is to
17 say Acquisitions and Investors will get an option for
18 100,000 shares, right?

19 A In the event the aforesaid transaction is
20 closed, we will as consideration for the services be
21 rendered to you, an option, which will issue. It
22 was never issued.

23 Q You signed this, did you not?

24 A Yes, I did..

25 Q It is your signature at the bottom?

2 A Yes, it is.

3 THE COURT: Was it closed?

4 THE WITNESS: Transaction, your Honor,
5 between Bell-Ko and Industries?

6 THE COURT: Yes.

7 THE WITNESS: Yes.

8 THE COURT: That says you are going to get
9 100,000 options if the transaction closed?

10 THE WITNESS: Yes, your Honor.

11 Q And you had every expectation you would get it?

12 A Yes, I did.

13 Q And you didn't disclose that in the proxies
14 either, did you?

15 A No, I did not.

16 MR. RAKOFF: I'll pass that to the jury.

17 Q At the same time on February 8th that
18 Mr. Uhlen was making out that check for Marty Greenberg's
19 stock you were arranging with Harold Herman to try to
20 get his other 180,000 shares of Bell-Ko freed up, weren't
21 you?

22 A No, Mr. Rakoff.

23 Q Well, you heard Mr. Herman say that you
24 called him and asked him to free it up and he refused?

25 A No, I did not hear that.

to the jury, Government Exhibit 932.

MR. JANIS: Your Honor, has anyone authenticated this tape? I object to it.

THE COURT: Will you please go on to something else and I'll rule on it during a recess.

MR. RAKOFF: All right.

Q You said you did recognize Mr. Netter's voice there, did you?

A I would not recognize Mr. Netter's voice. If anything I would recognize my own voice I think but I certainly don't recognize Mr. Netter's voice.

Q You recognize the conversation was about something between?

MR. JANIS: Your Honor, objection.

Q Without describing what the conversations with Mr. Mahler was about, was it about something as to which you have made arrangements?

MR. JANIS: Objection, your Honor.

THE COURT: Objection is overruled. Put the question this way: Was the subject matter something that you recognized as a subject matter that involved a conversation?

THE WITNESS: I cannot say that to be so, your Honor, no, I am sorry.

hpds 2

Mahler - redirect

Arnold Nelson, or Arnold Mahler and Arnold Mahler on a corporate resolution, I signed one Arnold Nelson and one Arnold Mahler, without trying to conceal that I was one and the same, to transfer securities.

Q Were you in fact both officers?

A Yes.

Q So neither one of them is misleading?

A Neither one of them is misleading.

Q With respect to your time in law school, Mr. Rakoff indicated that your law school records, that in fact you had been to law school more than six months. It develops you have been there between September and May. That's a period of eight months, isn't that right?

A Correct.

Q And not a year, but eight months, isn't that correct?

A Yes, Mr. Sharp.

Q With respect to your passport, I believe you indicated to Mr. Rakoff that the page in which the authorities --

THE COURT: By the way, September to May is nine months under anybody's count.

Q Nine months, is that right?

A Yes, Mr. Sharp.

1 hpds 3

Mahler - redirect

2 Q It's not a year, isn't that right?

3 A Correct.

4 Q Let me show you the passport.

5 I believe you indicated on there that when you arrived
6 back in the country, that the arrival dates are stamped
7 on the same page over one another, is that right?

8 A That is correct, Mr. Sharp.

9 Q Where does it appear on your passport?

10 A When you enter the United States --

11 THE COURT: Where does it appear?

12 THE WITNESS: On the fourth page next to the
13 picture.

14 Q With respect to the law school, actually you
15 started law school on the 30th day of September, is that
16 right?

17 A Yes, sir.

18 MR. SHARP: Now, your Honor, I suggest we are
19 back close to the eight months.

20 Q You also indicate that you were in Vermont
21 on January the 5th, 1973, is that correct?

22 A Yes, sir.

23 Q What were you doing there?

24 A On a skiing vacation.

25 Q Did you ever telephone your office from that

hpds 25

B. Mahler - recross/redirect

Q A-S-H-E-R?

A Yes, I do.

Q Who is he?

A He was a gentleman that we met in Fire Island some years back.

Q Did he and your husband have business dealings?

A He did some work for us at our house. I don't know of any other business dealings they would have had

Q You weren't really involved in your husband's business?

A No.

Q You don't know what went on in his office day-to-day or anything like that?

A No. I used to drop in occasionally but not to do with business.

MR. RAKOFF: Thank you very much.

THE COURT: How long was that African trip?

THE WITNESS: It was about three weeks.

THE COURT: Thank you. Step down.

MR. JANIS: Just one more question.

REDIRECT EXAMINATION

BY MR. JANIS:

Q Mr. Asher was a landscaper, is that correct?

A He did some work in the back for us, yes.

1711

1 gwds 1

2 United States of America

3 -vs-

76 Cr. 1047
(MP)

4 Arnold Nelson Mahler, et al.

6 New York, New York
7 October 26, 1977--19:40 a.m.

8
9 (Trial resumed)

Tkl 10 (Jury present)

11 THE CLERK: The Court is about to charge the
12 jury. Any spectators wishing to leave the courtroom will
13 do so now or remain seated until the completion of the
14 Court's charge.

15 Marshal, please lock the door.

16 THE COURT: Ladies and gentlemen of the jury,
17 I have observed the close and diligent attention that you
18 have given to this case and your faithful attendance, and
19 I want to thank you, each and every one of you, on behalf
20 of the Court and on behalf of counsel and the parties.

21 You undoubtedly realize that this is a very
22 important legal matter. We have reached the concluding
23 phase of the trial and the case will shortly be placed in
24 your hands for a verdict. I shall now give you your final
25 instructions which will guide your deliberations.

237

1 qwds 2

2 Briefly, as you have been told, the defendants
3 on trial have been charged by the government with criminal
4 offenses. They are set out for your consideration in a
5 legal paper called an indictment, a copy of which you have
6 received.

7 The effect of an indictment is to bring the
8 defendants to trial on the offenses of which they are
9 accused therein. This case calls for your response to the
10 indictment against Arnold Nelson Mahler and Dean Ubben.
11 You are not called to pass on the culpability of any others.
12 Your attention should not be distracted or diverted from
13 the specific task at hand.

14 The indictment in this case contains thirteen
15 separate charges, or counts, which you must consider. Each
16 count charges a separate crime, and both defendants are
17 charged with each and every one of these crimes. Each must
18 be considered separately as to each of the two defendants
19 on trial here. You must announce in your verdict the guilt
20 or non-guilt of each of the defendants on each count of the
21 indictment.

22 In the determination of whether or not there
23 is guilt, you must bear in mind that guilt is personal.
24 The guilt or absence of guilt of each defendant on trial
25 before you must be determined separately with respect to

1 qwds 3

2 each defendant.

3 It is your recollection of the evidence that
4 counts here and not the recollection of counsel and not my
5 recollection. The evidence is what came from the testimony
6 of the witnesses or from the exhibits admitted in evidence
7 and not from what counsel may have suggested by argument.

8 The evidence and the evidence alone is to be
9 your guide. It is for you to determine the weight that
10 you will extend to the witnesses who testified and the
11 reasonable inferences that are to be drawn from the evidence
12 that has been received.

13 From time to time in these instructions I
14 will refer to the government's contentions or the defense's
15 contentions under a particular count of the indictment.
16 However, I caution you that in doing so it is nonetheless
17 your recollection of all the evidence that controls and not
18 my statements or the way I marshal contentions.

19 You should consider all the evidence presented
20 before you, and even if I fail to mention a particular
21 contention or a particular fact to which a witness testified
22 or which was set out in an exhibit, that fact or contention
23 should still be reviewed by you and you must not infer from
24 the summary in these instructions that the Court accepts
25 or rejects certain parts of the record.

1 qwds 4

2 The function of believing or disbelieving
3 testimony or exhibits and of accepting or rejecting in-
4 ferences to be drawn from evidence lies squarely within
5 your province. The Court holds and expresses no opinion as
6 to the validity of any contentions made by the defendants
7 or by the government.

8 Although this trial has lasted for a number
9 of days and you have heard a great deal of oral testimony
10 as well as a considerable amount of documentary evidence
11 which has been received, yet the basic matters and the
12 issues submitted for your resolution are not complex or
13 difficult to grasp.

14 I will first outline the charges in the in-
15 dictment and then discuss those charges in detail.

16 The indictment, as I have told you, is a
17 statement of accusations. It is not proof of anything that
18 is said and nothing in it has evidentiary significance.
19 You are told by the indictment what the issues are that you
20 are going to be asked to decide.

21 The first twelve counts of this indictment
22 are the so-called fraud counts in that they allege violations
23 of what we describe in a shorthand way as mail fraud, wire
24 fraud and securities fraud statutes. Both Mahler and Ubben
25 are named in each and every one of the counts.

1 gwds 5

2 In order to find a defendant guilty under a
3 fraud count in which he is named, the government must
4 establish beyond a reasonable doubt the three following
5 essential elements:

6 First, that there existed a scheme or artifice
7 to defraud or to obtain money by false and fraudulent
8 pretenses, representations or promises in connection with
9 the offer or sale of stock of Industries International, Inc.
10 at or about the time alleged in the count.

11 Second, that the defendant knowingly and
12 wilfully helped devise and employed the scheme or artifice
13 to defraud, with knowledge of its fraudulent nature and with
14 the intent to defraud, or that a defendant knowingly and
15 intentionally aided and abetted others to do so.

16 And third, that the use of interstate travel
17 under Counts 1, 4, 6 and 7 -- don't worry about the numbers
18 at the moment because you will have them before you and we
19 will come back to that again -- that the use of interstate
20 travel under Counts 1, 4, 6 and 7, the use of interstate
21 wire facilities under Counts 2, 5, 9 and 11, and the use of
22 the mails under ~~Counts~~ 3, 8, 10 and 12 was involved in
23 carrying out the scheme or fraud.

24 Turning now to the first essential element
25 of the fraud counts. The charge here is that there was a

1 gwds 6

2 scheme, one of whose objectives was to commit a fraud. Now,
3 fraud is a sweeping conception. It is a term that embraces
4 all the possible means, however ingenious, clever or crafty,
5 by which a person seeks to gain some unfair advantage over
6 another person by intentional misrepresentation, false
7 suggestions, or suppression or concealment of the truth,
8 and so a scheme to defraud is any plan or design by which
9 one or more persons seeks to obtain money or property from
10 others, the members of the public, for example, by means
11 of representations that are intentionally false.

12 False representations, in turn, may be made
13 in two ways: First, by affirmatively stating facts as true
14 when the facts are not true, and second, by omitting or
15 concealing from what was said material facts that are
16 necessary to make what was said truthful.

17 All of you know from everyday life that a
18 statement may be literally true so far as it goes but it
19 may nevertheless convey a totally false picture if it omits
20 things that would be necessary to avoid misleading and
21 deceiving the person to whom the statement is made. In
22 other words, once a person undertakes to state certain facts
23 to another person, he has an obligation not to give a
24 distorted picture of the facts which renders his statement
25 misleading. Sometimes a half truth is no more honest than

1 qwds 7

2 an outright falsehood and, therefore, a scheme to make
3 false representations may be constituted by half truths
4 which are calculated to mislead.

5 For example, if you were to sell someone a
6 piece of land and tell him that it is a full acre of land
7 in sunny Florida, that might be all true so far as it goes,
8 but if you omitted to add that the land was ten feet under
9 water in the middle of a swamp, well, you would be defraud-
10 ing him just as surely as if you had affirmatively lied
11 to him. In short, the law provides that it is not enough
12 that what you say to a person before taking his money or
13 property is technically true. You have to give him in what
14 you say a true overall picture, and if you intentionally
15 leave out something important, what the law calls a material
16 fact, then you might very well be guilty of fraud.

17 The government charges that the scheme en-
18 gaged in by the defendants included both affirmatively false
19 statements and also statements that were false because of
20 what they failed or omitted to state. Indeed, some of the
21 charges that have been most in the forefront of this case
22 have been charges that either or both of the defendants
23 hid matters that they should have revealed. For example,
24 the government contends that Mahler and Ubben allegedly hid
25 the fact that the company, Industries International, was

1 gwds 8

2 financially destitute and that they allegedly hid the fact
3 that a broker allegedly was bribed to get the stock of
4 Industries International listed in the pink sheets for stock
5 trading purposes.

6 In assessing whether or not there was a
7 fraudulent scheme, you will want to take into account as
8 well the nature of the over-the-counter securities market,
9 that Congress intended that this market, like all regulated
10 markets in securities should operate as a free and open
11 public market and be free of artificial influence and
12 transactions which operate as a fraud on investors and the
13 public generally.

14 At this point I think it is appropriate that
15 I read to you the specific description of the alleged scheme
16 to defraud as it is set forth in paragraphs 2 to 6 of the
17 indictment, and perhaps you will want to follow along with
18 me in your copy.

end
tkl
am

19
20
21 (Continued on next page)

1 hubr 1

2 Paragraph 2 states the object of the scheme
3 was to unlawfully enrich Mahler, Ubben and their co-schemers
4 through a sophisticated stock swindle which would defraud
5 the public of more than a million dollars.

6 3. It was part of the scheme that
7 Mahler and Ubben and their co-schemers would unlawfully
8 and fraudulently create channels for the public sale of
9 Industries International stock by such means, among others
10 as: Bribing brokers, preparing false and misleading
11 documents; concealing their control of substantial blocks
12 of stock; concealing their roles in the sale of stock;
13 fraudulently touting the stock to groups of stockbrokers
14 and others; and falsely evading the federal registration
15 requirements and other federal regulations governing the
16 sale of securities.

17 4. It was part of the scheme that Mahler
18 and Ubben and their co-schemers would generate an artificial
19 demand for Industries International stock by such means,
20 among others, as: Misrepresenting the company's financial
21 status and prospects through misleading financial statements,
22 projections, and the like; concealing the fact that the
23 company was losing money, had little or no net worth
24 and had a poor sales record; promising to deliver to
25 prominent private investors free and tradeable shares

1 hphr 2

2 of Industries International stock without revealing that
3 such stock, which was never in fact delivered, could only
4 have been delivered through the undisclosed and unlawful
5 use of nominees; and, misuing the fact that the aforesaid
6 prominent investors had been induced in various fraudulent
7 ways to invest in the stock to, in turn, create interest
8 in the stock among the less wealthy investors.

9 5. It was part of the scheme that Mahler and
10 Ubben and their co-schemers would rig and manipulate the
11 sale of Industries International stock, both in the public
12 over-the-counter market and in various private sales, by
13 such means, among others, as: Bribing brokers and
14 arranging for brokers and others to get undisclosed and
15 unlawful kickbacks from the proceeds of their sales of
16 stock; arranging for trades of Industries International
17 stock to occur at pre-arranged prices and in pre-arranged,
18 fixed and rigged ways, rather than, as the law required,
19 according to supply and demand and the independent decisions
20 of investors; buying and selling stock, in excess of the
21 legal limits, through the use of nominee accounts; and,
22 freeing up for sale, in attempting to free up for sale,
23 stock properly restricted from sale, by the undisclosed
24 and unlawful use of nominees and the use of unlawfully
25 obtained attorneys' opinion letters.

1 hnbr 3

2 6. It was part of the scheme that Mahler
3 and Uhben and their co-schemers would attempt to conceal
4 the entire on-going scheme from the investing public and
5 from government investigators by such means, among others,
6 as: Removing any mention of their names from the publicly
7 available documents relating to Industries International;
8 funnelling the proceeds of both public and private sales
9 of Industries International stock through various nominee
10 accounts; concealing bribes, payoffs, and divisions of the
11 proceeds of the fraud by a variety of fraudulent contrivances,
12 such, as, for example, payments purporting to be for other
13 purposes; destroying brokerage account forms and sub-
14 stituting falsified forms in their places; and, devising
15 false stories to be told by their co-schemers to government
16 investigators.

17 Now you can put those papers down for the
18 moment.

19 The government is not required to prove
20 every misrepresentation or omission charged in these
21 paragraphs that I have just read. In fact, the government
22 is only required to prove that any one of those misrep-
23 sentations or omissions was made.

24 To put it another way, the law says that it is
25 just as much a scheme to defraud if there is one misrep-

1 hnbr 4

2 sentation or material omission as if there were many, and
3 even though the indictment charges many, the government
4 can carry its burden as to this first element of the crime
5 if it establishes beyond a reasonable doubt even just one.

6 In addition, let me instruct you that it is
7 not even necessary for the government to establish in this
8 case that any particular person actually relied on or
9 even actually suffered damages as a consequence of any
10 false statement or omission of any material facts. It
11 is enough if you find in this respect that a false statement
12 or statement omitting material facts was made as a part
13 of a fraudulent scheme in the expectation that it would
14 be relied on.

15 For example, if you find that the financial
16 statements for Industries International were false and
17 misleading and that they were issued in the expectation
18 that they would mislead brokers, the public and investors
19 generally into believing the company's financial position
20 was better than it really was, it is irrelevant that a
21 particular broker or a particular investor may not have
22 cared about the financial position of the company.
23 Or, to give another example, if you find that nominee
24 names and false documents were used in an attempt to
25 dupe the transfer agent, Tiemers, into freeing up stock

1 hphr 5

2 for sale to the public, it is irrelevant whether or not
3 as to any given certificate of stock the transfer agent
4 was fooled.

5 I have used the word "material" in describing
6 the kind of false statements or omissions that are wrongful
7 under all of the laws with which you are concerned. We
8 use the word "material" to distinguish the kinds of state-
9 ments we care about from those that are of no real importance.

10 A material fact is one which could reasonably be
11 expected to be of concern to a reasonable and prudent person,
12 relying on the statement in making a decision. That
13 means if you find a particular statement of fact to have
14 been untruthful, before you can find that statement or
15 omission to be material, you must also find that the
16 statement or omission was one that would have mattered to
17 a reasonable person in making a decision.

18 In a rough way, the various misstatements
19 and omissions charged in the indictment fall into three
20 categories: Misrepresentations concerning the company,
21 Industries International; misrepresentations about its
22 stock; and misrepresentations about the way that the stock
23 was being traded.

24 An example of the first type is the charge in
25 the indictment that the true financial shape of the company

1 Subr 6

2 was purposely concealed from the public and investors and
3 other interested persons such as brokers. If you wanted
4 to determine whether a finding that a misrepresentation
5 concerning the financial shape of the company was material,
6 you would ask yourself the question: Would knowledge of
7 the true financial position of the company affect the
8 decision of a reasonable investor whether or not to buy
9 stock in that company?

10 Similarly, an example of the second category
11 of misrepresentation charged here is a charge that the
12 defendant Ubben did not actually have any free and trade-
13 able stock when he sold it to various investors.

14 So, if there is a finding that the stock
15 sold was not of that kind, you would ask yourself the question
16 If investors were told that that person did not have the
17 kind of stock he was purporting to sell them, would that
18 have affected their decision to pay him for the stock?

19 Finally an example of the third category of
20 the charge of misrepresentation is the charge that both
21 defendants secretly bribed brokers to list the stock for
22 trading in the pink sheets and to pre-fix the prices on
23 specific trades.

24 So, hereagain, if there is a finding of such
25 conduct and it was not disclosed, and thus operated as

1 hbr 7

2 a misrepresentation of the freedom and openness of the
3 market, to decide if this was material, you would ask
4 yourself: Would a reasonable investor or a broker inter-
5 ested in buying or trading the stock in question be af-
6 fected in his decision whether or not to buy or trade the
7 stock by knowledge that the broker making the market
8 on the stock in the pink sheets had received secret pay-
9 ments to list the stock for trading and to pre-arrange the
10 prices of the trades for the benefit of the people
11 making his payments. If so, then the failure to mention
12 those payments and those pre-arranged sales constitute
13 material omissions.

14 The same principle applies to fraudulent
15 omissions as to fraudulent statements. If you find that
16 information was intentionally withheld or omitted, which
17 would, if disclosed, have changed the nature of the informa-
18 tion that was given, so that a reasonable person's decision
19 to act or not to act may have been different, then the
20 omission was material.

21 Everything that I have been telling you
22 about thus far relates to the first element of the crime
23 of fraud. That is, the existence of a fraudulent scheme.

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2 Before going on to the second element, let
3 me add one final observation.

4 If you find that there existed a scheme to
5 defraud, it is not necessary that you find, even if it
6 should be the fact, that anyone was actually defrauded or
7 that the defendants reaped any or all the proceeds from the
8 fraud. You concentrate on whether or not there was such a
9 scheme.

10 My point here is that while you are perfectly
11 free to take into account the fact that the scheme may have
12 succeeded in whole or in part, if you find such to be the
13 case, nevertheless it is not necessary for the government to
14 prove that the scheme succeeded and only that such a criminal
15 scheme was devised and employed.

16 The second essential element of the twelve
17 fraud counts is the requirement of proof that a defendant
18 participated in the fraudulent scheme wilfully and with in-
19 tent to defraud.

20 The word "participation" is a word that you
21 are all familiar with, and therefore I don't need to spend
22 much time defining that for you. Participating in a scheme
23 to defraud means associating oneself with it with a view
24 and intent to make it succeed. While a mere onlooker is
25 not a participant in a scheme to defraud, it is not necessary

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2 that a participant be someone who personally and visibly
3 executes the scheme to defraud. Indeed, in this case the
4 government contends that the defendants sought to conceal
5 their roles in the alleged fraud by, among other means,
6 getting others to do the out front, the actual, work of, for
7 example, procuring the pink sheet listings and the brokers
8 with secret bribes. If you find that a defendant played
9 an essential role in putting the scheme together, that
10 would be sufficient to show participation.

11 Moreover, even if you found the scheme was
12 put together by others, you would be entitled to find that
13 the defendants had participated in the fraudulent scheme
14 if they knowingly and intentionally aided and abetted the
15 others in their employment or execution of the scheme.

16 This concept of aiding and abetting indeed
17 relates not just to the question of participation but to
18 each and every element of the charges in these fraud counts.
19 So let me digress for a moment to tell you about the legal
20 notion of aiding and abetting.

21 Section 2 of Title 18 of the United States
22 Code, which sets forth the calendar of crimes, separate
23 crimes, provides as follows:

24 "Whoever commits an offense against the United
25 States or aids, abets, counsels, commands, induces or

1 qwds 3

2 procures its commission (is guilty of that offense)."

3 And:

4 "Whoever wilfully causes an act to be done
5 which, if directly performed by him or another, would be
6 an offense against the United States (is guilty of that
7 offense)."

8 Thus, under the federal statute and under
9 this indictment, a defendant would be guilty if all of the
10 essential elements are shown even though he did not himself
11 directly and openly commit the offense in question if, in-
12 stead, you find he aided and abetted the commission of that
13 offense.

14 That means, of course, you cannot find a
15 defendant guilty of being an aider and abettor unless you
16 find the offense was actually committed, but by contrast
17 it does mean that you must find a defendant guilty if he
18 aided and abetted the commission of the offense even if he
19 was not the one who surfaced in and performed the trans-
20 action.

21 To decide whether a particular defendant aided
22 and abetted the commission of an offense, you ask yourself
23 these questions: Did he knowingly and wilfully associate
24 himself with the criminal venture? Did he knowingly and
25 wilfully participate in it in some or another way with the

1 qwds 4

2 purpose and intent to bring it about, even though he did
3 not accomplish the criminal misconduct directly or personally
4 Did he knowingly and wilfully, by his own action, intend
5 to help make that criminal enterprise succeed. If he did,
6 then you may find that the person in question is an aider
7 and abettor.

8 An act is done knowingly if it is done
9 voluntarily and purposely rather than accidentally or negli-
10 gently.

11 We say an act is wilful if, in addition to
12 being knowing in its performance, it is done deliberately.

13 It is not required that the government show
14 that a defendant in addition to knowing what he was doing
15 and deliberately doing it knew that he was violating some
16 particular law. He does not need to know the law whatsoever.

17 Before a defendant may be convicted of the
18 fraud charges here, he must be shown to have acted not only
19 knowingly and wilfully but also with the specific intent to
20 defraud. That means he must have engaged or participated
21 in the fraudulent scheme with some realization of its
22 fraudulent or deceptive character and with an intention to
23 be involved in the scheme to defraud and to help it succeed.

24 Now, all this talk about knowledge and intent
25 directs you to be concerned with the state of people's minds,

1 gwds 5

2 specifically, the minds of the defendants. We are commonly
3 called upon for serious reasons to make judgments about
4 what other people really think and believe and intend, and
5 we know from experience that we frequently cannot rely on
6 so-called direct evidence, pictures, when we are trying to
7 determine whether a person has or had such knowledge or
8 such intent.

9 We habitually consider, and you will consider,
10 all the non-direct or circumstantial evidence in deciding
11 whether the alleged intent to defraud has been made out
12 with respect to the defendant before you.

13 The existence or non-existence of guilty
14 knowledge is something commonly to be inferred from what I
15 call circumstantial evidence, distinguishing it from direct
16 evidence, and that means from a consideration of all the
17 circumstances that seem to rationally have a bearing on the
18 subject. You consider, in short, all the circumstances
19 and put them together in the whole setting of the case and
20 decide from all the evidence with respect to each defendant
21 separately whether he acted knowingly and wilfully as to
22 the events that are the subject of this case.

23 In judging knowledge and intent, you are
24 privileged to take account of what the law calls similar
25 acts evidence. Acts and conduct similar to those charged

1 qwds 6

2 in the indictment, if you so find, may be considered
3 circumstantial evidence for the sole purpose of proving a
4 defendant's criminal knowledge and intent, plan and prepara-
5 tion but not for the purpose of showing criminal character.

6 You have heard two kinds of evidence of
7 alleged similar acts. One kind consisted of evidence of the
8 defendant Mahler's previous indictment and conviction for
9 participation in stock fraud offenses and his own testimony
10 admitting certain facts relating to those offenses, the
11 testimony given in another case that was read to you.

12 The other kind of evidence consisted of testi-
13 mony regarding the participation of Mahler and/or Ubben in
14 the attempted public distribution of a stock called HUP and
15 a stock called UGBI. That is called evidence of alleged
16 similar acts, and, as you will recall, some of it is said
17 to relate to Mahler, some to Ubben and some to both.

18 Now, as I instructed you when this evidence
19 was first offered, its admissibility is limited to and may
20 be considered solely on the issues in this case of criminal
21 intent or knowledge or plan or preparation or the absence
22 of mistake or accident on the part of the defendant or
23 defendants as to whom it was admitted in evidence. In
24 addition, you may consider Mahler's previous convictions
25 on the issue of his worthiness of belief as a witness, which

1 qwds 7

2 I will discuss with you later in my charge. However, you
3 may not consider such evidence as direct proof of criminal
4 character.

5 In plain English, our law provides that each
6 case must be judged on its own merits and that the fact
7 that a person once acted illegally does not mean that he
8 thereafter necessarily acted illegally, but at the same
9 time the law likewise recognizes, and it is only common
10 sense, that if a man once demonstrated that he had the neces-
11 sary knowledge and intent to carry off a stock fraud, he
12 does not necessarily lose that knowledge and that capacity
13 with the passage of time and may, indeed, have acted with
14 identical knowledge and intent in a similar situation which
15 arises sometime thereafter, and you therefore may have reason
16 to be skeptical of his claims that he was an innocent dupe
17 when the allegedly same situation presents itself at a
18 later time.

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21 (Continued on next page)

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2 Closely tied up with your consideration
3 of a defendant's knowledge and intent is the question of
4 good faith. That is, each defendant here contends that
5 they acted throughout in good faith, and that if he did
6 participate at all in the commission of any fraudulent
7 scheme, it was not by design but out of a good faith belief,
8 however mistaken, in what he was saving or doing or in what
9 others were saving or doing in his behalf. The defendant
10 Uhben, for example, claims that he acted in good faith on the
11 basis of advice that he claims was given to him, such as
12 by the accountant Bialek or the lawyer Herman, as to the
13 transactions in which he was engaged. The government, for
14 its part, disputes that any such advice was ever given.

15 However, even if such advice were given,
16 and even if it were honestly relied on, which the govern-
17 ment also disputes, even then it would not necessarily
18 establish good faith, so as to negate the kind of knowing
19 and wilful misconduct required for a conviction. And that
20 is because the significance and utility of professional
21 advice must be appraised in terms of the completeness and
22 accuracy of the facts placed before the person giving the
23 advice. On the one hand, if an attorney or an accountant has
24 a full and candid picture of the facts of a transaction
25 or a proposed transaction and if the professional then

1 hphr 2

2 says that the person seeking the advice may legitimately
3 go ahead and engage in certain behavior, that would be
4 some indication that the person is not proceeding in bad
5 faith or with an intent to defraud or deceive anybody.
6 But on the other hand, you will realize that if critical
7 facts are withheld from the accountant or lawyer or
8 misstated, then the advice can scarcely be deemed to con-
9 stitute a basis for good faith reliance.

10 An example. If, as the Government claims,
11 Ubben withheld from Bialek the public use to which he
12 intended to put Bialek's financial statements, that would
13 deprive him of any claim of good faith reliance on those
14 statements, which Bialek marked "for internal use."

15 Similarly, if as the Government claims, Mahler
16 withheld from Herman any disclosure of his alleged non-compliance
17 with the **three** limitations on the sale of Mahler's stock
18 that are set forth in Herman's opinion letter, that would
19 deprive Mahler of any claim of good faith reliance on those
20 opinion letters.

21 Finally, in considering this overall question
22 of criminal knowledge and intent versus good faith, you
23 may find that a defendant acted with guilty knowledge and
24 intent if you find that the particular defendant you are then
25 considering acted with deliberate disregard for the true

1 hpbr 3

2 facts and with a conscious purpose to avoid learning the
3 truth, even though you may find that defendant was not
4 specifically aware of the true facts. Good faith may
5 be a defense, but self-delusion is not.

6 In other words, as you assess each
7 defendant's state of mind to determine whether he acted
8 wilfully and intentionally, I instruct you that the
9 law is that a defendant cannot avoid criminal liability by
10 deliberately closing his eyes to facts he had a duty to
11 see, or, by deliberately stating as facts things of which
12 he knew he was ignorant and by consciously avoiding the
13 discovery of the true facts of the matter. For example,
14 even if you were to find that Mahler, as he claims, was
15 not directly aware of all that Zucker and Kulekofsky were
16 doing with stock and companies in which he had an interest,
17 you would still have to consider whether this was innocent
18 ignorance or whether he purposely was avoiding finding out
19 the specifics of what was going on because he knew it
20 would prove to be fraudulent. If the latter was the case,
21 then you could still infer that he sufficiently had the criminal
22 intent to meet the requirements of the fraud charges here.

23 Similarly, a person who makes representations
24 without knowing or caring whether they are true or false
25 cannot be regarded as acting innocently. If you assert

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2 something to be the case, the assertion carries with it the
3 implicit representation that you believe it to be true.

4 If you assert something to be true when in fact you have
5 no genuine belief that it is true, then the assertion is
6 misleading or deceptive. Even opinions carry with them
7 the implicit representation that they are honestly held.

8 For example, it is not necessary for the
9 Government to prove that the defendant knew to a certainty
10 that there was no legal way he could obtain, let alone sell,
11 free and tradeable Industries International stock when it
12 was unregistered. The required knowledge would be
13 established if you found that the defendant acted with
14 deliberate and wanton disregard as to whether he could
15 obtain such stock legally and with a conscious purpose
16 to avoid learning whether or not a person in his position
17 was forbidden from obtaining and selling such stock.
18 Some assertions carry with them an express or implied
19 representation that the person making the representation
20 knows that it is true. If the defendant intended for it
21 to be understood that what he said was true to his personal
22 knowledge, and intended for others to act on the basis of
23 what he said, then he acted with the requisite intent
24 if he did not know that what he said was true. In short,
25 the character of every act depends upon the circumstances

1 page 5

2 in which it is done.

3 So, I say in sum that on the second and
4 essential element of the Counts 1 through 12, that is, the
5 element that the defendant acted knowingly, wilfully and
6 with fraudulent intent, it is for you finally to review
7 and put together all the circumstances in deciding whether
8 or not that element has been established beyond a reasonable
9 doubt with respect to the defendant you are considering.

10 Now I come to the third and final element of
11 the fraud counts, Counts 1 through 12 of the Indictment,
12 and that is the use of interstate travel, interstate wire
13 communication, and the mails in the employment and execution
14 of the fraudulent scheme. This third element is often
15 called the jurisdictional element, for the reason that the
16 federal government gets involved in the prosecution of
17 frauds only when there is some kind of interstate activity
18 or where the use of the mails is involved.

19 You may recall that I told you at the outset
20 of my instructions that three different fraud statutes are
21 involved in the fraud counts of this indictment: The
22 so-called securities fraud statute, wire fraud statute
23 and the mail fraud statute. For purposes of this case, the
24 first two elements needed for a conviction under any of
25 these statutes are identical, and that is why I have been

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2 able to describe those first two elements to you without
3 making any distinction between whether the charge
4 was under the securities fraud statute, the wire fraud
5 statute or the mail fraud statute. But when we come to
6 the third and final essential element the jurisdictional
7 element, these three statutes become a little different
8 from one another in their requirements. Specifically,
9 the securities fraud statute requires some use of interstate
10 facilities and instrumentalities. The particular
11 facility or instrumentality which is charged in the counts
12 of this indictment falling under the securities fraud
13 statute is the use of interstate travel, that is to
14 say, airplanes, trains, and other modes of transportation
15 between states.

16 Next, the wire fraud statute requires some use
17 of interstate wire communication, and the particular
18 wire communications which are charged in the counts of this
19 indictment coming under the wire fraud statute are inter-
20 state telephone calls and interstate bank transfer wires.

21 Finally, the mail fraud statute requires
22 some use of the mails, whether between states or within
23 a single state, and the remaining fraud counts of this
24 indictment charge some such use of the mails.

25 Now, if you turn to paragraph 7 of the

1 page 7
2 indictment, which is entitled "Statutory and Jurisdictional
3 Allegations," you will find, after some legal language,
4 a table, which is carried on over the next two pages as well,
5 listing the jurisdictional act for each and every one of
6 the twelve fraud counts and briefly describing why the
7 particular jurisdictional act is charged as having been
8 in furtherance of the overall fraudulent scheme. This
9 table is simply a listing of the third element, the jurisdic-
10 dictional element for each of the counts. The rest of the
11 counts, the part that sets forth the first two elements
12 that are the same for all 12 counts, occupies the first
13 six paragraphs of the indictment, and this seventh para-
14 graph, with its table, is simply a listing of the third
15 element, the one respect in which the counts vary individually
16 one from another.

17 In particular, be sure to bear in
18 mind that, whether or not a particular defendant directly
19 participated in the jurisdictional use charged in a
20 specific count is irrelevant to his overall liability.
21 Both defendants are charged with each and every count of
22 this indictment, and you must render a verdict as to them on
23 each and every count.

24 Indeed, if you found that a defendant was
25 guilty of the first two elements of fraud, as I have

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2 previously explained them to you, you could find that
3 defendant guilty of a count of fraud even if he personally
4 had nothing whatever directly to do with the particular
5 jurisdictional use that was charged as having been committed
6 in furtherance of that fraud.

7 (Continued on next page.)

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2 Now, as it happens, both defendants' names
3 appear in most of the jurisdictional acts listed in this
4 table in paragraph 7, but this is not by any means a re-
5 quirement. There are one or two exceptions even in this
6 table. For example, if you look at the jurisdictional act
7 listed for Count 9, you will observe that it is a telephone
8 call from William Wellens, the salesman at P.J. Stanton &
9 Company, to the defendant Ubben, in which they are said to
10 have discussed having the accountant Bialek provide further
11 financial statements to get Industries International stock
12 trading in the pink sheets. And you will recall that Wellens
13 testified to having made such an interstate call, and his
14 testimony is supplemented by certain telephone toll records
15 that are in evidence that show a telephone call from P.J.
16 Stanton's number in New York to a number identified pre-
17 viously as the number for Tina Investment Company in
18 Sullivan, Colorado.

19 Now, my point is that even though that call
20 was allegedly made between Wellens and Ubben, the other
21 defendant, Mahler, would be just as liable on Count 9 if
22 you were to find that the call was made and was made in
23 furtherance of an overall fraudulent scheme in which he
24 intentionally participated.

25 So I say to you one last time both defendants

1 qwds 2

2 are charged with each and every one of the fraud counts,
3 regardless of which of them is named as having directly
4 participated in the particular jurisdictional act listed
5 under a particular count. .

6 Now if you were to turn to the form of verdict
7 that I have given you, the single piece of paper, you will
8 note that there is described thereon the counts falling under
9 the securities fraud statute and therefore involving charges
10 of use of interstate travel as 1, 4, 6 and 7; the counts
11 falling under the wire fraud statute and therefore involving
12 charges of use of interstate wire communications are
13 Nos.2, 5, 9 and 11, which specifically refer to interstate
14 telephone calls; and the counts falling under the mail
15 fraud statute and therefore involving charges of use of the
16 mails, whether interstate or within a state, you will find
17 are referred to as 3, 8, 10 and 12.

18 Thus, there are four counts under each
19 statute and twelve fraud counts in all.

20 Incidentally, the particular count of the
21 mail charge in the final count, Count 12, involves the
22 clearing back through the mails following deposit of the
23 so-called Jefferson Retread check, Government Exhibit 97.
24 If you turn in your copy of the indictment to No.12 under
25 paragraph 7, which is on the sixth page of the indictment,

1 gwds 3

2 you will see that it involves the clearing back through the
3 mails following deposit of the so-called Jefferson Retread
4 check, Government's Exhibit 97.

5 And in that respect I remind you that it has
6 been stipulated by the parties that the check did in fact
7 clear back from Denver, Colorado, to New York and ultimately
8 to Jefferson Retread in Long Island through a combination
9 of the mails and private delivery services. Whether, of
10 course, that check was drawn and deposited in furtherance
11 of the fraudulent scheme is, by contrast, the subject of
12 dispute between the parties, one of the many disputes that
13 you will have to resolve, but at least you will not have
14 to resolve the question of how and where that check cleared
15 back to Jefferson Retread. That much has been stipulated.

16 Now, even though these jurisdictional acts
17 differ from count to count, there are certain principles
18 applicable to them as a group which I will briefly mention
19 to you at this time.

20 First, in order to carry its burden on this
21 third element of each fraud count, the government must
22 prove beyond a reasonable doubt that the particular juris-
23 dictional act charged in each count was committed in execu-
24 tion or employment of the fraudulent scheme that constitutes
25 the first essential element of the offense rather than

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2 merely incidentally or without real connection to the
3 alleged fraudulent scheme. At the same time, the government
4 is not required to prove that the particular jurisdictional
5 act charged as having occurred was foreseen or intended by
6 either or both defendants. It is enough for conviction if
7 a defendant reasonably foresaw that in the execution and
8 employment of the fraudulent scheme, depending on the count,
9 some such use of interstate travel, interstate wire communi-
10 cation, or the mails was reasonably likely to occur.

11 Further, let me instruct you that in order
12 for a jurisdictional act to be in execution or employment
13 of the fraudulent scheme, it is not required that the act
14 itself be in any sense fraudulent. It may, indeed, be a
15 legal act. For example, the jurisdictional act charged
16 in Count 1 is that Ubben traveled to New York from out-of-
17 state to meet with Mahler and others in a hotel in Manhattan
18 where they planned certain aspects of the fraud.

19 Now, travel by itself is not fraudulent, of
20 course, but the charge is that the travel was a step toward
21 getting Mahler and Ubben together so that they could plan
22 aspects of the fraud. It is that kind of relation to the
23 fraud that is required, nothing more direct. Indeed, it
24 can be a good deal less direct so long as it is foreseeably
25 the kind of jurisdictional act that would occur in further-

1 qwds 5

2 ance of the fraud.

3 I have now completed the instructions to you
4 on the three elements that you must consider when judging
5 the fraud counts, that is, the first twelve counts of the
6 indictment, and I am about to turn to the remaining, the
7 thirteenth or final, count of this indictment, which charges
8 the two defendants with participation in a conspiracy.

9 I have been talking to you for a little while
10 and I would like to give you a chance to rest, maybe stand
11 up in your places and stretch and then we will continue.

12 (Pause)

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16 (Continued on next page)
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2 The thirteenth or final count of this indict-
3 ment charges the two defendants with participation in a
4 conspiracy. That is to say, a combination of persons schem-
5 ing in concert to achieve, or attempt to achieve unlawful
6 ends. The unlawful ends, or objects, of the conspiracy
7 charged in this indictment include not only the fraudulent
8 scheme previously described but also include scheming
9 allegedly to sell or attempt to sell unregistered stock and
10 make false statements to a governmental agency.

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11 As with the fraud counts, there are essential
12 elements that must be satisfied beyond a reasonable doubt
13 before you can convict either or both defendants of con-
14 spiracy.

15 What is a conspiracy?

16 A conspiracy is a combination or agreement
17 of two or more persons by concerted action to accomplish a
18 criminal or unlawful purpose or else to accomplish some
19 purpose, not in itself criminal or unlawful, by criminal
20 or unlawful means.

21 The gist of the crime of conspiracy is the
22 unlawful combination or agreement to violate the law.

23 Whether or not those persons accomplished what it was that
24 they are alleged to have conspired or set out to do is im-
25 material to the question of guilt or innocence. Thus, the

1 hpds 2

2 success or lack of success of the scheme does not matter,
3 for a conspiracy is a crime rely separate and distinct
4 from the substantive crime may be the goal of the
5 conspiracy.

6 A conspiracy has sometimes been called a
7 partnership for criminal purposes to which every partner
8 becomes the agent of every other partner.

9 To establish a conspiracy the government is
10 not required to show that two or more persons sat around
11 the table and entered into a solemn pact orally or in writing
12 stating that they formed a conspiracy to violate a law,
13 setting forth the details of the plans, the means by which
14 the unlawful project is to be carried out, or the part to
15 be played by each conspirator. Indeed, it would be extra-
16 ordinary if there was such a formal document or specific
17 oral agreement. Your common sense will tell you that when
18 men and women in fact undertake to enter into a criminal
19 conspiracy much is left to the unexpressed understanding.

20 Conspirators do not usually reduce their
21 agreement to writing or acknowledge them before a notary
22 public, nor do they publicly broadcast their plans. From
23 its very nature, conspiracy is almost always characterized
24 by secrecy rendering detection difficult.

25 Thus, it is sufficient to establish a conspiracy

1 hpds 3

2 if two or more persons in any manner through any contrivance
3 impliedly or tacitly, come to a common understanding to
4 violate the law. Express language or specific words are
5 not required to indicate assent or attachment to a conspiracy

6 On the other hand, proof concerning the
7 accomplishment of the objects of the conspiracy may be the
8 most persuasive evidence of the existence of the conspiracy
9 itself. To simplify this perhaps a bit more, success of
10 the venture, if you believe it was successful, is the best
11 proof of the venture or the agreement.

12 In determining whether there has been an un-
13 lawful agreement, you may take into account the acts and
14 conduct of the alleged members of the conspiracy which are
15 done to carry out an apparent criminal purpose. The adage,
16 "Actions speak louder than words" is here often applicable.
17 Usually the only evidence available is that of disconnected
18 acts on the part of the alleged individual conspirators,
19 which acts, however, when taken together in connection with
20 the reasonable inferences flowing therefrom, show a conspiracy
21 or agreement to secure a particular result as satisfactorily
22 and conclusively as more direct proof.

23 If upon consideration of the evidence, direct
24 or circumstantial, you find beyond a reasonable doubt that
25 the minds of the alleged conspirators met in an understanding

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2 and that they agreed, as I have explained a conspiratorial
3 agreement to you, to work together in furtherance of the
4 unlawful purposes alleged in the indictment, then proof of
5 the existence of a conspiracy is established.

6 Once satisfied that the conspiracy charged
7 existed, you must ask yourselves who its members were. In
8 deciding whether a defendant whom you are considering was
9 a member of the conspiracy, you should consider whether on
10 all the evidence such defendant knowingly and purposely
11 entered the conspiracy. You must determine whether the
12 conspiracy charged in the indictment existed between two
13 or more conspirators. To find a defendant guilty you must
14 find that he was a member of the conspiracy charged in the
15 indictment and not some other conspiracy.

16 In determining whether such defendant became
17 a member of the conspiracy, you must determine not only
18 whether he participated in it, but whether he did so with
19 knowledge of its unlawful purpose and the specific intent
20 to carry it forward as an associate or worker in it. Did
21 he join with awareness of at least some of the basic aims
22 and purposes of the conspiracy?

23 Knowledge is a matter of inference from facts
24 proved. It is not necessary that a defendant be fully in-
25 formed as to the details of the scope of the conspiracy in.

1 hpds 5

2 order to justify any inference of knowledge on his part.

3 To have guilty knowledge a defendant need not
4 know in advance the full extent of the conspiracy and all
5 of its activities and actors. Of course, mere association
6 with a conspirator does not make one a member of a conspiracy
7 nor is knowledge without participation sufficient. What
8 is necessary is that a defendant participate with knowledge
9 of at least some of the purposes of the conspiracy and with
10 intent to aid in the accomplishment of those unlawful ends.

11 Once you have found the conspiracy to exist
12 and the defendant whom you are considering to have knowingly
13 and intentionally participated in it, the extent of his
14 participation has no bearing on his guilt or innocence.
15 The guilt of a conspirator is not measured by the extent or
16 the duration of his participation. Even if he participated
17 in it to a degree more limited than that of others of the
18 co-conspirators, he is equally culpable so long as he was,
19 in fact, a conspirator.

20 When people enter into a conspiracy to accom-
21 plish an unlawful end, they become agents for one another
22 in carrying out the conspiracy. Hence, the acts or declara-
23 tions of any conspirator knowingly made in the course of
24 the conspiracy and in furtherance of the common purpose can
25 be considered by you against any defendant found to be a

1 hpds 6

2 member of the same conspiracy, even in his absence and
3 without his knowledge, providing that the actions and declara-
4 tions were done or made during the continuance of the same
5 conspiracy and in furtherance of some object or purpose
6 thereof.

7 The final essential element of the crime of
8 conspiracy is that an overt act to effect the object of the
9 conspiracy be committed by at least one of the co-conspirator
10 Why is this necessary? The concept of conspiracy is schem-
11 ing. Suppose you have scheming and nothing is done to
12 carry out the scheme, no objective overt act to carry out
13 the scheme. Then the charge of conspiracy must fail, other-
14 wise we would be having thought control only.

15 You must have some overt act, whether an inno-
16 cent act or guilty act, providing that act was done during
17 the course of the scheme and in furtherance of some object
18 of it. Thus, if one were to say a person walked from here
19 to Broadway, that in itself might be an innocent act; but
20 in the circumstances of the alleged conspiracy, that act
21 may achieve something as an integral or essential part of
22 carrying out the purpose.

23 An overt act is any step, action or conduct
24 which is taken to achieve, accomplish or further the objec-
25 tive of the conspiracy.

Mahler

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Once conspirators move forward down the road to putting their unlawful plan into action, then the law says that they are acting dangerously and against the public good and deserve to be punished.

Each of the twelve jurisdictional acts that we went over in connection with the fraud counts is realleged and incorporated by reference in the conspiracy count as being overt acts in furtherance of the conspiracy, but, in addition, the conspiracy count specifies eight additional overt acts which we shall now read together, if you will turn to them in the indictment.

You will find under the heading of "Overt Acts" on the next to the last page of the indictment the following. The first of these overt acts is in paragraph 14, sub-division (a). You will note that the charge of the grand jury which has to be established beyond a reasonable doubt is that:

"In addition, in furtherance of the conspiracy and to effect its objects, the defendants also committed the following additional overt acts, among others, in the Southern District of New York, and elsewhere:"

And then sub-division (a).

"On or about March 1, 1973, Edward Tiemers of ABS Transfer Company delivered unlegended certificates

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2 for 80,000 shares of Industries International common stock
3 to the office of Harold Herman, Esq. in New York, N.Y.,
4 which shares were thereafter sold and resold in the public
5 market and the proceeds divided, directly and indirectly,
6 by Mahler, Ubben, Zucker, Kulekofsky, Wellens and Greenberg.

7 "(b) On or about March 2, 1973, by pre-
8 arrangement between various of the conspirators, 40,000
9 shares of Industries International stock was sold at 50 cents
10 per share from Marvin Greenberg's account at John R. Potter
11 & Company, in New York, N.Y., to Mahler's and Zucker's
12 Anted Vending account at DuVest Securities in New Jersey,

13 "(c) In and around March 2-8, 1973, 20,000
14 shares of Industries International stock were sold from
15 Mahler's Acquisitions and Investors account at Saxon
16 Securities, in New York, N.Y., to P.J. Stanton & Company
17 and other brokers, for combined proceeds of more than
18 \$65,000.

19 "(d) On or about March 7, 1973, by pre-
20 arrangement between Mahler, Ubben, Kulekofsky, and various
21 other co-conspirators, 5000 shares of stock in the Anted
22 Vending account at DuVest Securities were sold to Louis
23 Kulekofsky's account at P.J. Stanton & Company in New York,
24 N.Y. at \$3.50 per and the remaining 35,000 shares in the
25 Anted Vending account were sold to an account at the Central

National Bank in Des Moines, Iowa at \$2 per share.

"(e) In and around March 7-12, 1973, Mahler and Zucker, at Mahler's office in Long Island, arranged to have a new account formed signed by Michael Sichel substituted for the original Anted Vending Company signed by Mahler and Zucker.

"(f) On or about March 13, 1973, Mahler and Zucker delivered a cash payment to Kulekofsky at Mahler's office in Melville, Long Island.

"(g) On or about April 3, 1973, at Mahler's office in Melville, Long Island, Mahler and Zucker agreed to funnel \$30,000 to Ubben in the form of a check from Jefferson Retread Company to Edward Currie that falsely purported to be for the purchase of HOP stock, and further agreed that Zucker would pay Kulekofsky approximately \$12,000 still owed him and Wellens as their bribes and kick-backs from this stock fraud.

"(h) In and around early May, 1973, Mahler met with Harold Herman and Greenberg at a coffee shop at Kennedy Airport, in Queens, N.Y., to devise a false story for Herman to tell government investigators."

I want to remind you that it is only necessary for you to find proof of just one of the overt acts in order to satisfy the overt act element of the conspiracy. One

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2 open act as a step to further the conspiracy is enough,
3 and many are here alleged, but proof of one is the only
4 essential requirement.

5 While we are on the subject of overt acts,
6 this is a good opportunity to bring to your attention that
7 the law only requires a substantial similarity between the
8 dates alleged in the indictment and the dates established
9 by the testimony or exhibits.

10 The same goes for most of the other factual
11 contentions in the indictment. For example, whether the
12 indictment says \$65,000 and it turns out just to be \$64,957
13 is totally immaterial. As long as there is substantial
14 similarity between the indictment and the proof, that is
15 enough.

16 The conspiracy count, when you get around to
17 reading it, you will find charges a conspiracy to violate
18 several statutes, specifically the mail fraud, wire fraud,
19 and securities fraud statutes, with which you are already
20 familiar, as well as two other statutes I shall now describe.

21 When I say a charge in a conspiracy to violate
22 the statutes, I do not mean that anyone contends that the
23 alleged conspirators knew the actual statutes involved.
24 What is charged is that they planned to carry out concerted
25 unlawful activity which, if carried out, would have violated

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2 those statutes.

3 Furthermore, as I told you previously, it is
4 sufficient for you to find that their plan or conspiracy
5 embraced activity that would have violated any one of those
6 statutes. It is not necessary that you find that it would
7 have violated more than one.

8 Now, as I said, since you are already familiar
9 from our discussion of Counts 1 to 12 with three fraud
10 statutes, no further instructions are needed in that regard.
11 But I want to say a word now about the other two statutes
12 mentioned as objects of the conspiracy since we have not
13 previously discussed them.

14 The first of these statutes, the false
15 statement statute, which is referred to in paragraph 12
16 of the indictment -- paragraph 12 is the third from the last
17 page of the indictment -- is rather straightforward.
18 Specifically, the underlying statute, the False Statement
19 Act, provides as follows:

20 "Whoever in any matter within the jurisdiction
21 of any department or agency of the United States knowingly
22 and wilfully falsifies, conceals, or covers up by any trick,
23 scheme or device a material fact, or makes any false,
24 fictitious or fraudulent statements, or representations,
25 or makes or uses any false writing or document knowing the

1 gwds 6

2 same to contain any false, fictitious or fraudulent state-
3 ment or entry (is guilty of a criminal offense)."

4 The government charges here in paragraph 12
5 that the defendants conspired, schemed, plotted to violate
6 that statute, and not that they necessarily committed the
7 substantive offense specifically.

8 The government contends that when, for example,
9 Harold Herman allegedly made false statements to the SEC
10 about when he met with Greenberg, he was allegedly acting
11 pursuant to a plan worked out with the defendant Mahler
12 and Greenberg at Kennedy Airport.

13 To give another example, the government con-
14 tends when the Anted Vending forms bearing the name Michael
15 Sichel were allegedly substituted for the real forms, that,
16 too, was pursuant to an alleged plan of action in which
17 Mahler allegedly participated. So that even though Mahler
18 did not commit the substantive offense, he was, according to
19 these allegations, part of a conspiracy to commit them.
20 Similar allegations are made as to Ubben.

21 Since the terms of the False Statement Act
22 are either clear on their face or have already been defined,
23 it remains only to add that to make out a violation of
24 conspiring to violate the false statement statute the
25 prosecution would have to prove beyond a reasonable doubt

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2 that it was an object of the conspiracy to make false state-
3 ments or submit false documents in a matter within the
4 jurisdiction of a department or agency of the United States.
5 As a matter of law, I will tell you that an investigation
6 of alleged Security Act violations is a matter within the
7 jurisdiction of the SEC, which is an agency of the United
8 States.

9 Finally, paragraph 10 of the indictment under
10 the heading of "Statutory Allegations" lists as still
11 another possible object of the conspiracy the violation of
12 the laws prohibiting the sale of unregistered stock.

13 Some of you may recall that these laws were
14 the subject of my brief instructions to you at the very
15 start of this case. As I told you then, following the
16 crash of the stock market in 1929, Congress passed a law
17 called the Securities Act of 1933, designed to protect the
18 investing public and the public generally from the kinds
19 of deceptions and concealments in the sale of securities
20 that are supposed to have helped to lead us to the great
21 Depression.

22 The Securities Act of 1933 created a compre-
23 hensive plan to promote full and fair disclosure in the
24 offer and sale of securities.

25 One part of this plan was the securities fraud

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2 statute, which we have already discussed. That statute is
3 actually one section of the Securities Act of 1933.

4 But another provision of the same Act was the
5 requirement that securities be registered with the SEC be-
6 fore they are distributed in public sale. Indeed, the
7 registration provision is often said to be the first line
8 of defense in guaranteeing full and fair disclosure, because
9 it provides that at the very outset, before a company ever
10 starts selling its securities to the public, whether on the
11 stock exchange or over-the-counter markets, it must file a
12 registration statement with the SEC, and that statement must
13 disclose fully and truly a large number of facts about the
14 nature of the company and its stock, the persons actually
15 in control of the company and its stock, the true financial
16 condition of the company, its reasonably anticipated
17 prospects for the future and a good deal more.

18 I should mention in this connection that the
19 registration requirement of the Securities Act was thought
20 to be necessary because securities are, by their very
21 nature, quite different from other types of merchandise for
22 which there are established public markets. You know that
23 when you want to buy a new car or a household appliance or,
24 for that matter, a house, you can to some extent determine
25 from personal inspection the quality of the product and the

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2 reasonableness of the price in relation to other competing
3 products, but that is not so with respect to a share of
4 stock.

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As a practical matter, it is not possible for the average investor to differentiate between securities of little or no value, those of a highly speculative nature and those offering at least reasonable prospects of a satisfactory return on his investment. He cannot himself make such distinctions because the average person generally is unable to make a personal investigation of the properties and operations of the company issuing this stock.

He must, therefore, rely upon available oral and written information about the company, its financial condition, its assets, its management, its operations, its products, its resources, its prospects and the terms and conditions respecting its securities.

Congress believed that by requiring a detailed statement of such information to be made available to investors and also to be filed with and submitted to the scrutiny of the SEC, prior to any sale of any securities, investors would at least be assured of disclosure of certain important facts about a company and its stock before they ever invested.

Now, all of this is by way of prelude to the fact that one of the charges in the conspiracy here is that the defendants conspired and schemed to sell

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2 unregistered stock. This charge also comes up, in
3 slightly different fashion, in the fraud counts.

4 Specifically, in describing the scheme to defraud, the
5 indictment charges that as part of that scheme, the defend-
6 ants purposely violated the registration requirements.

7 Of course, that was was only one small part of the scheme
8 charged, and as I instructed you earlier, it is not necessary
9 for you to find that every part of a fraudulent scheme
10 as charged in the indictment is established by the proof.
11 it is sufficient if the proof establishes any one material
12 part of that fraudulent scheme.

13 But now, in the conspiracy count, this
14 question of registration arises again, not as part of any
15 scheme to defraud, but rather as a pure allegation that
16 the defendants conspired to sell unregistered stock,
17 regardless of whether they did so as part of a scheme to
18 defraud or otherwise. Now this is only one of the five
19 objects of the conspiracy charged in the indictment and
20 I remind you again that it is sufficient if you find that
21 any one of the objects is established by the proof;
22 nevertheless, since this is one possible such object,
23 it behooves us to say a few words about what must be
24 established to prove that the sale of unregistered stock
25 was an object of the alleged conspiracy.

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2 In order to establish such an object, the
3 government must prove that the defendants intended to sell
4 stock of Industries International, knowing that it was
5 unregistered and knowing that such registration was required
6 before distribution of the stock in sales to the public.

7 There is no real dispute, as I recall, over
8 the fact that Industries International stock was in
9 fact never registered. You must, however, first
10 ascertain whether, as part of any alleged conspiracy,
11 a defendant knew this. For example, was the fact that
12 most of the stock bore on its face a stamp or legend
13 saying it was unregistered sufficient to alert either or
14 both defendants to the fact? That is the kind of question
15 you must ask yourselves. If you decide that a defendant
16 knew that the stock was unregistered and that, nonetheless,
17 he entered into a conspiracy or combination to sell it,
18 the other question you must ask yourself is whether the
19 defendant, at the time he was acting within this conspiracy,
20 knew that the stock had to be registered before he could
21 sell it. For example, despite the stamp or legend
22 saying that the stock could not be sold, he might be totally
23 ignorant of this requirement.

24 Or, even if fully aware of this requirement,
25 he might have in good faith believed that an exemption

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2 or exception from registration was available to him in the
3 sale of this stock.

4 As it happens, the defendants here variously
5 claim that two exemptions were available to them or that
6 they so believed at the time. As to their Industries
7 International shares that were formerly Bell-Ko shares of
8 which, I believe, it is undisputed, the defendant Mahler
9 sold a large amount and the defendant Uhben attempted
10 to sell an even larger amount, the defendants claim that
11 their sales or their attempted sales were exempt from
12 registration under former Rule 133, promulgated by the
13 SEC. That rule provided that in the case of a
14 reorganization merger such as you have had described to
15 you in this case, between a public corporation like Bell-Ko
16 and a private corporation like Industries International,
17 certain shares remained eligible to be sold to the public
18 without further registration. However, that exemption
19 under Rule 133 would not be applicable to any shares held
20 by Mahler and Uhben if any one of the following conditions
21 was present:

22 (a) There were bribes to brokers in con-
23 nection with sales of such shares;

24 (b) There were fixed or rigged prices
25 or other pre-arrangements in connection with the sales of

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2 such shares.

3 (c) More than 40,000 shares were sold,
4 directly or indirectly, by the conspirators, whether
5 acting individually or jointly and whether acting in
6 their own names or in the names of nominees;

7 (d) There was no valid reorganization between
8 Bell-Ko and Industries International prior to the expir-
9 ation of Rule 133, which expired on December 31, 1972, or
10 if there was no such valid reorganization because the
11 Bell-Ko shareholders or some of them were not accurately
12 apprised of the real facts underlying the proposed merger
13 or because the board of directors of Industries Inter-
14 national never approved the proposed offer to the
15 Bell-Ko shareholders until, if ever, January 1973 and if
16 the minutes which purported to show they approved it in
17 November 1972 were actually backdated and false or for,
18 both of those reasons, then Rule 133 could not be relied
19 upon as an exemption.

20 (e) If the reorganization of Bell-Ko and
21 Industries had no genuine independent business purpose
22 of its own, but was simply a step in a plan to distribute
23 securities to the public without having to register them,
24 then Rule 133 as an exemption, it would not be applicable.

25 If the persons organizing the reorganization

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2 of Bell-Ko and Industries International had sufficient
3 control of the voting stock to make a vote of Bell-Ko
4 stockholders a mere formality, then Rule 133 would not
5 be applicable.

6 And finally, if the reorganization of the
7 Bell-Ko and Industries was simply one step in an overall
8 fraudulent scheme, Rule 133 could not be relied upon.

9 So, if you were to find that even just one of
10 those seven conditions that I have just called to your
11 attention was present, that one would destroy any claim
12 of there being a valid exemption under Rule 133. You
13 would still have to consider whether, notwithstanding the
14 absence of any valid exemption, one or both defendants
15 still in good faith believed that was a valid exemption
16 under Rule 133, and that in turn would depend on your
17 overall analysis of all the facts and circumstances bearing
18 on a defendant's intent and good faith, something I have
19 previously discussed with you in detail and therefore I need
20 not go over it again.

21 The other exemption on which there is said to
22 be some reliance in this case is the so-called private
23 placement exemption. On the facts of this case, this
24 exemption has application, if at all, only to the defendant
25 Uhben and only to the restricted stock he sold. It has no

1 hubr 7

2 application to any of the stock charged as having been
3 sold by Mahler, nor does it relate to any of the so-called
4 free and tradeable stock that Ubben purportedly sold.
5 But the claim here is that Ubben believed, when he
6 and those associated with him sold restricted stock in
7 private transactions out in the Midwest, that those
8 sales were exempt from registration because they involved
9 alleged private offerings of restricted stock to a limited
10 number of persons who were fully apprised of what the
11 company was all about. The reason for this so-called
12 private placement exemption is that there sometimes exists
13 a narrow group of private investors who are in a position
14 to know, or who find out directly from the company, all
15 the kinds of information that would normally be disclosed
16 in a registration statement; therefore, as to them, there
17 is no need for the protections afforded by the requirement
18 of registration. But they cannot, in turn re-sell
19 their stock to the uninformed public; hence it is restricted
20 from sale.

21 In assessing, therefore, whether the people
22 to whom Ubben sold restricted stock fit this exemption,
23 you have to look to both what their situation was and what
24 were Ubben's intentions towards them.

Mahler

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1 If you were to find that some or all of these
2
3 people did not in fact have access to the material facts
4 about the company, such as its true financial condition,
5 the persons actually in control of the stock and facts of
6 that kind, then there could be no private placement exemp-
7 tion. And even if you were to find that they did have
8 access to all such material information, you would have to
9 look to see whether it was Ubben's intention to sell to
10 them as a limited group of private investors to whom he
11 would supply such information, or whether it was his inten-
12 tion to sell to anyone he could interest in buying the
13 stock, regardless of their access to information, their
14 situation, their sophistication, and the like. If you found
15 Ubben's intention was simply to sell the stock to whomever
16 he could, regardless of their situation and so forth, then
17 again you have to conclude that there was no basis for a
18 private placement exemption.

19 Even if no private placement exemption existed,
20 you would have to consider whether Ubben in good faith be-
21 lieved that one did. But that again would depend on all
22 the facts and circumstances. I have already spoken to you
23 about the good faith reliance on lawyers and its unavail-
24 ability where the attorney is not told material facts.

25 The mere fact that he may have hoped or deluded

himself into thinking that such an exemption existed would not support a finding by you of his having a good faith belief in the existence of such an exemption. The law requires something more substantial than that. Otherwise, enforcement of the registration provisions would constitute a nullity.

I now want to turn to some general instructions that will guide you in your assessment of the overall evidence in this case.

Each defendant before you has pleaded not guilty. That means that the government has the burden of proving guilt beyond a reasonable doubt with respect to every material element of each crime that the defendant under consideration is accused of having committed.

The defendant is under no obligation to prove his innocence under our laws. He is presumed to be innocent of any charge in the indictment, and that presumption is sufficient to require an acquittal of a defendant unless you, the jury, on all the evidence, are convinced beyond a reasonable doubt of a defendant's guilt.

A reasonable doubt is one that arises out of the evidence in the case or lack of evidence. A reasonable doubt is one that appeals to your reason, to your judgment, to your common sense and your experience. It is not a

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2 caprice, it is not a whim and it is not a speculation, and
3 it is not an excuse to avoid performance of an unpleasant
4 duty. And it certainly is not sympathy for a defendant.

5 A reasonable doubt is such as would cause
6 prudent people to hesitate in acts of importance to them-
7 selves.

8 Putting it a little differently, if you are
9 confronted, as indeed you are here, with an important
10 decision and, after having reviewed all the factors that are
11 pertinent for that decision, you find yourself beset by
12 uncertainty and you are unsure of your judgment, then you
13 have a reasonable doubt.

14 Conversely, in that same situation, if you
15 have taken into account all the elements that pertain to
16 the problem and you find you have no real uncertainty, no
17 substantial reservation about your judgment, then you have
18 no reasonable doubt.

19 Proof beyond a reasonable doubt does not mean
20 proof to a positive certainty or proof beyond all possible
21 doubt. If the latter were the rule, few persons, however
22 guilty, could ever be convicted. It is practically impossible
23 for a person to be absolutely and completely convinced of
24 any kind of fact which we deal with in trials, facts which
25 in their nature are not susceptible of mathematical certainty.

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2 So that kind of certainty, as I have tried to indicate, is
3 not the test of reasonable doubt.

4 You have heard me sometimes refer to direct
5 evidence and to circumstantial evidence, and it is well to
6 explain now the difference between these two types of evi-
7 dence.

8 Direct evidence is where a witness testified
9 to what he saw, heard or observed, what he knows of his
10 own knowledge, something which comes to him by virtue of
11 his senses. Circumstantial evidence is evidence of facts
12 and circumstances from which one may infer connected facts
13 which reasonably follow in the common experience of mankind.

14 Stated somewhat differently, circumstantial
15 evidence is that evidence which tends to prove a disputed
16 fact by proof of other facts which have a logical tendency
17 to lead the mind to a conclusion that those facts exist
18 which are sought to be established.

19 Circumstantial evidence, if believed, is of
20 no less value than direct evidence, for in either case you
21 must be convinced beyond a reasonable doubt of the guilt
22 of a defendant.

23 Let's take one simple example, one which is
24 often used and may be applicable today in this courtroom,
25 to illustrate what is meant by circumstantial evidence.

2 We will assume when you entered the courthouse
3 this morning the sun was shining brightly outside and it
4 was a clear day and there was no rain, the sky was clear.
5 Now, assume that somebody comes walking in through that door
6 into the courtroom with the blinds drawn and the drapes
7 down and you can't look outside, and assume that when you
8 are sitting in this jury box and despite the fact that you
9 remember it was dry when you came here this morning, some-
10 body walked in with an umbrella dripping water, followed
11 in a short while by a man in a raincoat and the raincoat
12 is wet.

13 Now, you haven't looked outside the courtroom
14 in the meantime to see whether it was raining or not, and
15 if you were asked whether it was raining you couldn't say
16 that you know it directly of your own observations because
17 you didn't look, but certainly upon the combination of facts
18 as given, even though when you entered the building it wasn't
19 raining outside, it would be reasonable and logical for you
20 to conclude from the circumstantial evidence that it is
21 raining now.

22 That is about all there is to circumstantial
23 evidence. You infer, on the basis of reason and experience
24 from an established fact, the existence of some further
25 fact.

1 gwds 6

2 There are times when different inferences
3 may be drawn from the facts, whether they are proved by
4 direct or circumstantial evidence. The government asks you
5 to draw one set of inferences while the defendants ask
6 you to draw another. It is for you to decide, for you
7 alone, what inferences you will draw.

8 In evaluating the evidence which has been
9 placed before you, you are required to determine the
10 reliability of the witnesses that you have heard and the
11 extent to which you can count on any or all of them for
12 accurate accounts of the facts. You have heard conflicting
13 stories from the witness stand. Credibility is a key
14 question in this case. You have had an opportunity to ob-
15 serve the witnesses as they testified. You want to be
16 asking yourselves, in thinking together, how each witness
17 impressed you. Did the witness appear to be truthful,
18 candid, frank, forthright, or did the witness seem to be
19 evasive, deliberately obtuse, shifty or suspect in some other
20 way? Was there inconsistency or disparity in what the
21 witness remembered and failed to recall, and was it explained
22 or explainable? Did the witness appear to know what he or
23 she was talking about, and did the witness impress you as
24 having a purpose to report his or her knowledge to you truth-
25 fully, fully and accurately? Was he or she consistent or

1 gwds 7

2 specifically contradictory? How did the manner and the
3 matter of his or her testimony on direct examination compare
4 with his or her manner or matter of the testimony on cross-
5 examination?

6 You should consider not only the intrinsic
7 persuasiveness of each person's testimony by itself but
8 its setting in the circumstances of the whole case.

9 For example, the degree to which any particular
10 item of testimony is corroborated or contradicted in the
11 case and all such things you test by your own mature evalua-
12 tion about life, about people and about human behavior.

13 A witness may be discredited or, as we say,
14 impeached by contradictory evidence or by evidence that he
15 or she made statements inconsistent with his or her testi-
16 mony on the witness stand.

17 Evidence that any witness, whether he be a
18 defendant or other, that he has been convicted in the past
19 of criminal conduct may be considered by you in determining
20 his credibility, by which is meant his worthiness of belief.

21 You should consider, among other things, the
22 question of intent or motive, if any, of the witness.

23 The witnesses have been identified, and they
24 have told you about their background and associations. You
25 may wish to consider whether the witness may have had induce-

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1 gwds 8

2 ments or incentives or loyalties or motives to shade the
3 truth or biases of one kind of another that may have led
4 the witness consciously or not to give you less than a
5 completely accurate account of the facts he or she purported
6 to portray.

7 If you believe a witness has wilfully sworn
8 falsely before you, you are free to disregard all of the
9 testimony of that witness or, at your option, to accept and
10 credit only such parts of it as your judgment dictates should
11 be accepted. How much or how little you accept is to be
12 your decision.

13 You have also heard testimony from what we
14 call an expert witness. Although the general rule is that
15 witnesses are permitted to testify only as to facts and
16 may not express their opinions, the exception to this rule
17 is the opinion of a qualified expert on some particular
18 technical matter. The expert may testify as to his opinion
19 on a subject concerning which he has special knowledge.
20 This is allowed on the theory that the advice of one exper-
21 ienced and versed in special or technical subjects will
22 aid you.

23 The government called one expert witness in
24 this case, Mr. Ivan Braverman, who gave his opinion as to
25 the financial statements prepared by Bialek that appear in

1 gwds 9

2 the proxy statements. He told you it was his opinion that
3 the financial statements were improper and that the improp-
4 prieties he observed were not accidental but were rather
5 purposeful. We heard from another expert in this case
6 called on behalf of the defendant Mahler, who gave you his
7 opinions in respect to the requirements of the securities
8 laws.

9 In weighing expert testimony, you may con-
10 sider the expert's qualifications and opinions, his reasons,
11 if any, and give his testimony such weight as you feel it
12 deserves. As previously stated, expert opinion is purely
13 advisory and you may accept it or reject it entirely or
14 in part as you believe best. The determination of the
15 facts in this case rests solely with you.

16 The government called certain witnesses at
17 trial who by their testimony asserted that they were
18 accomplices in the crimes charges against the defendants
19 on trial.

20 In the prosecution of _____, the government
21 is often called upon to use witnesses who are accomplices
22 in the commission of the crime itself. That doesn't make
23 them accomplices merely because they say so. That has to
24 be established beyond a reasonable doubt with proof to your
25 satisfaction. The government frequently must use such

1 gwds 10

2 testimony because otherwise it would be difficult or im-
3 possible to detect or prosecute wrongdoers.

4 The testimony of an alleged accomplice is
5 not to be rejected unless the jury thinks it has no weight.
6 The fact that an alleged accomplice pleaded guilty or that
7 the witness may have motives for testifying falsely does
8 not necessarily show that the witness was testifying falsely.

9 If accomplices could not be used, there are
10 many cases where there is real guilt and where conviction
11 should be had and where convictions would not be obtainable.
12 Their evidence is properly considered by the jury. Their
13 testimony, however, must be examined and weighed by the jury
14 with greater care and caution than the testimony given by
15 an ordinary witness.

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17
18
19 (Continued on next page)
20
21
22
23
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Mahler 2

Charge 3

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It is the universal rule in the federal courts that a defendant may be convicted on the uncorroborated testimony of an accomplice. However, it should be pointed out that the government here does contend that it has offered corroboration and proof from other witnesses and by way of documents and records.

8 You have also heard testimony from both
9 defendants. A defendant who has testified is to have his
10 testimony assessed in the same way as you assess the
11 credibility of any other witness. The greater a person's
12 interest in the case, the stronger the temptation to testify
13 falsely.

14 It is perfectly obvious to all of you that
15 the men in this case with the deepest, greatest interest
16 are the defendants. In appraising their credibility you
17 may take the fact of interest into consideration.

18 However, it by no means follows that simply
19 because a defendant has a vital interest in the end result
20 he is not capable of telling a truthful, candid version of
21 the facts. It would be for you to make the judgment of
22 his believability under all the facts and circumstances in
23 evidence.

24 Although there has been a fair amount of
25 testimony, the issues which you are called upon to decide

1 hpds 2

2 seem to be relatively simple. Yet, I think it is desirable
3 to review in broad outline the contentions of each of the
4 partners. However, I caution you that in doing so, that
5 it is nonetheless your recollection of the evidence that
6 controls and not my statement of it or the contentions con-
7 cerning it, unless you agree, and that no inference is to
8 be drawn against the defendants from the manner or substance
9 of my review, or of my recollection, which in no event con-
10 trols your determination.

11 The evidence produced or elicited by the
12 government which it contends points to the guilt of the
13 defendants and its contentions thereon are as follows:
14 The two defendants before you on this trial, Mahler and
15 Ubben, are charged with both planning the crimes of stock
16 fraud, wire fraud and mail fraud in connection with the
17 stock of Industries International and also with actually
18 carrying out the crimes involved in that criminal plan.

19 The government contends that its evidence be-
20 fore you shows that in approximately four weeks the stock
21 of an allegedly worthless company, Industries International,
22 was marketed over-the-counter to unsuspecting members of
23 the public for upwards of one million dollars. The govern-
24 ment contends that it was these defendants, Mahler and Ubben
25 who in conspiracy with each other and others whose names

1 hpds 3

2 have been called to your attention, were the moving forces
3 in the alleged scheme and that, in carrying out the alleged
4 scheme, that they acted both directly and indirectly,
5 through nominees and other devices, and concealed their
6 true roles from the investing public.

7 In brief, the government contends that In-
8 dustries International, Inc. was in reality nothing but a
9 paper reorganization of a dormant public shell with a worth-
10 less private company that was unable to pay its bills as
11 they came due; that this reorganization was an essential
12 part of the plan allegedly devised by Mahler and Ubben,
13 which called for obtaining controlling interests in Bell-Ko
14 Film Company, a shell corporation whose stock could be
15 publicly traded, and then merging Bell-Ko with International
16 Industries, Inc., a private company whose stock could not
17 be publicly traded, to form a new company called Industries
18 International, Inc.. That is was further part of the alleged
19 plan to exchange stock of the public shell, which was
20 allegedly secretly controlled by Mahler, Ubben and Zucker,
21 for stock of the new company and then, arranging through
22 intermediaries and brokers to whom alleged improper secret
23 gratuities were promised or paid, to get the stock of the
24 new company listed in the pink sheets.

25 That the next step in the alleged plan was

1 hpds 4

2 to create by preplanned transactions the artificial appear-
3 ance of market activity in the stock of the new company
4 at advancing prices, and to create a demand for the stock
5 and lure the public and investors into trading in the stock
6 of Industries International which would allegedly allow
7 those on the inside, like Mahler and Ubben, to dispose of
8 their shares of stock which had cost them little or nothing
9 and which were really not worth anything.

10 The government contends that the essence of
11 this fraud was secrecy and non-disclosure and that a list
12 of the material facts which were not disclosed to the
13 public includes, among other things, the facts that the
14 company was worthless and insolvent; that the public shell
15 was secretly controlled by Mahler, Ubben and Zucker; that
16 a broker had to be bribed to get the stock listed for
17 trading in the pink sheets; that Mahler and Ubben controlled
18 large quantities of stock that they planned to distribute
19 to the public; that the stock that was marketed before the
20 SEC intervened was done so in pre-planned sales of nominee
21 stock at fixed prices; that private investors were falsely
22 promised free and tradable stock when none could be obtained
23 except through the unlawful use of nominee names; and, that
24 Mahler and Ubben had to forge, falsify, alter, backdate,
25 and destroy records and other documents to conceal what was

1 hpds 5

2 really going on.

3 The government contends that it has proven
4 each of these allegations. And, in response to Ubben's
5 claim of innocent reliance on others, the government points
6 to, among other proof, his alleged forging of the signature
7 of M. Reese on six opinion letters, and to his alleged
8 unauthorized use of nominee names on false documents, actions
9 which the government contends are inconsistent with any
10 claim of innocence.

11 Likewise, in response to Mahler's claims that
12 he was unaware of the alleged fraudulent acts being done
13 by Zucker and Kulekofsky, the government contends that this
14 claim is inconsistent with the fact that Mahler allegedly
15 was present at most of the key meetings in the alleged
16 fraud; that he is sophisticated in securities matters; that
17 he allegedly made the major decisions and that it was he,
18 not Zucker, who took the lead in, for example, allegedly
19 helping Ubben to obtain, or try to obtain, free stocks, in-
20 cluding both the Greenberg shares and the nominee shares.

21 The defendants deny that they committed the
22 frauds or engaged in any conspiracy to violate any federal
23 laws and contend that the government has failed to prove
24 them guilty beyond reasonable doubt. They rely on their
25 presumption of innocence and claim moreover that there is

1 hpd's 6

2 reasonable doubt of their guilt.

3 The defendant Arnold Nelson Mahler further
4 contends that he was not a participant or member of any
5 scheme or plan to circumvent or violate the securities laws,
6 and that at all times his actions were fully legal and with-
7 out fraudulent purpose.

8 Mr. Mahler contends that in late 1972 and early
9 1973 he made frequent trips out of town and abroad, includ-
10 ing trips to Vermont, London, Africa and Greece, and en-
11 trusted the details of much of his merger and acquisition
12 business to Mr. Ted Zucker. In particular, Mr. Mahler con-
13 tends he left Mr. Zucker responsibility for the arrangements
14 of the Bell-Ko Film-International Industries merger which
15 is the subject of this case. Mr. Mahler contends that any
16 violations of the securities laws committed in pursuance
17 of this merger were committed by Mr. Zucker and Mr. Kulekofsk
18 and their associates without the knowledge or participation
19 of Mr. Mahler.

20 In particular, Mr. Mahler contends that the
21 evidence shows he had no reason to believe that there was
22 anything improper or deficient in the financial statements
23 or financial condition of International Industries, the
24 company which owned the Dri-Flo pump, that he never touted
25 the pump or promoted the company or its stock; and that he

1 hods 7

2 never controlled, directly or indirectly, the management or
3 operations of the merged company.

4 Moreover, Mr. Mahler contends that he believed
5 that the merger of the companies had been properly consum-
6 mated and that a valid exemption for the sale of Mr. Mahler's
7 shares of stock was operable under SEC Rule 133. Mr. Mahler
8 contends that he had no knowledge of or complicity in un-
9 disclosed payments to brokers, the falsification or back-
10 dating of records, the prearranging of sales of stock, the
11 circumvention of SEC rules concerning freeing up of un-
12 registered stock, or the attempts by Mr. Zucker, Mr. Kulekofsky
13 and others to cover up wrongdoing.

14 Mr. Mahler contends that he left to Mr. Zucker
15 responsibility for the Bell-Ko-International Industries
16 merger, including acquisition of the shares and preparation
17 of the proxy statement.

18 Additionally, Mr. Mahler contends that
19 Mr. Zucker and Mr. Kulekofsky falsely shifted the blame for
20 the Industries International manipulation to Mr. Mahler,
21 made bargains with the government in exchange for testimony
22 against Mr. Mahler and then testified untruthfully against
23 Mr. Mahler.

24 Mr. Mahler contends that he was unaware of
25 and did not participate in any illegal aspects of the

1 hpds 8

2 Bell-Ko-International Industries merger, a merger he believed
3 had been properly and legally executed.

4 The defendant Dean Ubben further contends
5 that he intended to raise money for Industries International
6 honestly and legally and did not act with a fraudulent
7 purpose. Ubben also contends that he did not act with
8 criminal intent with respect to his fund raising activities
9 on behalf of Industries International.

10 Dean Ubben contends that he did not prepare
11 the Industries International sales projections and, in fact,
12 believed that they were honest forecasts of things to come.

13 He contends further that he did not bribe
14 brokers and that the claims of Wellens, Kulekofsky and
15 Zucker that he did are false. Mr. Ubben contends he told
16 all of the investors he solicited of Industries International
17 cash flow problems and plainly reported the fact that
18 Industries International was just beginning to sell pumps.

19 He contends that he had no idea of what facts
20 belonged in the Bell-Ko proxy and what facts did not and
21 that he relied on Harold Herman, the lawyer, and Ted Zucker
22 for the preparation of the proper proxy.

23 He contends that he was selling International
24 Industries stock in good faith reliance on two exemptions
25 from the registration requirements of the Securities Act

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2 of 1933, and that when he sold restricted stock he believed
3 the private placement exemption applied. When he also
4 offered and promised investors free and tradable stock he
5 believed that the Rule 133 exemption applied.

6 With respect to the Rule 133 exemption, Ubben
7 contends that he relied on the assurances of Harold Herman,
8 the securities lawyer, that all the rules would be and then
9 had been complied with. Ubben also contends that Harold
10 Herman explicitly told him that the 164,000 Bell-Ko shares
11 that Ubben obtained claims on through two bills of sale
12 could be converted into Industries International free and
13 tradable shares and then broken down through the use of
14 nominees in order to get free and tradable stock to the in-
15 vestors and that such a course of action would be legal.

16 In respect to 40,000 shares of the Industries
17 International stock origi. lly owned by Marvin Greenberg,
18 Dean Ubben maintains that he took no part in and had no
19 knowledge of the prearranged transactions the government
20 contends occurred.

21 Ubben contends that he took no part in the
22 over-the-counter transactions that occurred in 1973 in connec-
23 tion with the Greenberg shares and denies that he had con-
24 versation with Louis Kulekofsky about them.

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2 Now, in your deliberations you should not
3 even consider the question of possible punishment of the
4 defendants, that is to say, the question of punishment
5 in the event you were to determine a defendant guilty.
6 Under our system, the sentencing or punishment exclusively
7 is a function of the Court, not the jury. Therefore,
8 I ask you not to consider punishment or possible punish-
9 ment at all in your deliberations in this case.

10 When you undertake your deliberations on this
11 case in a few moments, use your common sense in evaluating
12 the evidence and the probabilities. Don't allow yourselves
13 to be confused with irrelevant detail, if you find there
14 is any, or be swayed or carried away or inflamed by
15 appeals to sympathy or passion. Suspicion or conjecture
16 or prejudice should not be substituted for proof. You
17 must maintain a calm, clear view of the case and not be
18 sidetracked by anything or anybody from a fair, dis-
19 passionate consideration of the evidence in arriving at your
20 resolution of the facts.

21 If, after your calm, clear review of the
22 case, you find a reasonable doubt that a defendant has
23 committed one or any or all of the offenses charged
24 here, you should not hesitate to acquit him on such
25 count or counts; but, on the other hand, if you find

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2 beyond a reasonable doubt that the law has been violated
3 as charged, you should not hesitate because of sympathy
4 or any other reason to render a verdict of guilty as a
5 clear warning that a crime of this character may not be
6 committed with impunity. The public is entitled to be
7 assured of this.

8 Your verdict must be rendered as to each
9 of the defendants Mahler and Ubben on each count. In
10 this regard, I want you to listen to each other carefully
11 in the jury room when you consider the matter. If you
12 think you are wrong and somebody else is right, don't
13 be embarrassed about changing your opinion. But remember
14 each of you has to decide the case for himself or herself.

15 The verdict of guilty or not guilty against
16 either defendant on any count as to which you are report-
17 ing to be acceptable must be unanimous.

18 You may, if you wish, report your verdicts
19 separately if that will aid you in your deliberations
20 as you from time to time reach some unanimity.

21 You have been provided with a copy of the
22 indictment and form of the verdict, and those will aid
23 you in recording what you have decided upon if you have
24 reached unanimity.

25 You are about to go into the jury room and

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2 begin your deliberations. During those deliberations,
3 if you desire any of the exhibits, those will be sent in
4 to you on request. If you want any of the testimony
5 read, that can be done. But please remember it is not
6 easy to find particular portions. So any request that you
7 do make through your spokesman must be in writing, and
8 your spokesman in this case will be Mrs. Estreicher, the
9 lady who sits in the first seat. The notes that you send
10 in to me should be signed by her, and please be as
11 specific as you possibly can.

12 Please do not communicate with anyone con-
13 cerning those deliberations about this case except in
14 writing signed by your spokesman, who will be provided
15 with pencil and paper by the marshal.

16 I want to take a moment to talk to the
17 lawyers. I may have misstated something or forgotten
18 something. I want to give them an opportunity to let
19 me know about it.

20 I will take them into the robing room so
21 that you can relax here while that is being done.

22 (In robing room.)

23 THE COURT: Are there any exceptions on
24 the part of the defendant Arnold Nelson Mahler?

25 MR. JANIS: Yes, your Honor. It seems that

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2 somehow or another I always get elected for these tasks.

3 We have many, many exceptions.

4 I think I can begin by stating that to the
5 extent that the instructions departed from or omitted
6 the requests that we made --

7 THE COURT: I have had no requests from the
8 defendant Mahler at any time.

9 MR. JANIS: We submitted proposed instruc-
10 tions. We submitted the instructions of Judge Frankel.

11 THE COURT: You mean you submitted his
12 charge?

13 MR. JANIS: That's correct.

14 We submitted that as a full and complete
15 charge in this case, and we would state that to the
16 extent the charge which the Court in fact gave departed
17 from Judge Frankel's charge we note our exception.

18 Also we note --

19 THE COURT: Just a minute. Where is the
20 clerk?

21 (Clerk enters robing room.)

22 THE COURT: What is the next court exhibit?

23 THE CLERK: Court Exhibit 9.

24 THE COURT: Your request to charge Judge
25 Frankel's charge is marked as Court's Exhibit 9.

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xx 2 (Court's Exhibit 9 was marked.)

3 MR. JANIS: Thank you.

4 As a general matter, your Honor, and then
5 if the Court would grant me leave, I will discuss each
6 instruction specifically, but as a general matter we
7 object to -- we believe that the instructions were some-
8 what one-sided in that they seemed to de-emphasize the
9 protections afforded the defendants and emphasized the
10 government's theory, and in many instances, to use
11 examples, that in our opinion were tantamount to govern-
12 ment arguments.

13 Also that there are minor things that we had
14 problems with. For example, the defendants were never
15 referred to as Mister. They were always referred to
16 by the last name. That obviously is not a major thing
17 but I think it set a tone.

18 There was virtually no emphasis whatsoever
19 in any part of instructions other than the specific
20 instructions dealing with presumption of innocence and
21 reasonable doubt, and I think in that sense the instruc-
22 tions as given were markedly in contract to the instruc-
23 tions that we requested.

24 As for the specifics, I think that it was
25 not emphasized to the jury in strong enough terms that

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2 the indictment which the Court read to them at great
3 length is of no evidentiary significance at all, it is
4 just a piece of paper, and I am concerned that they may
5 think that because so much time was spent reading the
6 indictment that the indictment is of some evidentiary
7 value or it takes on a life of its own.

8 Request No. 4 of the government. We would
9 object to the second paragraph on page 3 and the first
10 half of page 4.

11 We would also object to the instructions
12 given on page 6, including the examples, and on page 7,
13 and in particular the second paragraph on page 7. Also
14 page 8.

15 On instruction number five, on page three of
16 instruction number five, the second paragraph -- excuse
17 me -- the third paragraph. The Court read the sentence
18 which states: "Where by contrast it does mean that you
19 must find the defendant guilty if he aided and abetted
20 in the commission of the offense."

21 We would object to the use of the word "must."
22 We believe it is an incorrect statement of the law.

23 THE COURT: My impression is that you mis-
24 heard what I read and that you are reading from something
25 which does not follow slavishly what I entered on the

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2 record. But you may make your point anyway, if you wish.

3 MR. JANIS: I did note in instances the
4 Court changed and departed from the government's request.

5 THE COURT: In major instances, wouldn't you
6 say?

7 MR. JANIS: I didn't find them as major as
8 the Court did.

9 THE COURT: Sometimes when you have spare
10 time I will show you my copy of their requests to show
11 that it was major.

12 MR. JANIS: Your Honor, in this instance, I
13 did hear the Court say that the jury must find a guilty
14 verdict under those circumstances.

15 On page 4 of that instruction --

16 THE COURT: By the way, when did you get
17 your copy of the government's requests for instructions?

18 MR. JANIS: I got them -- I don't have the
19 cover page. I think last Wednesday.

20 MR. RAKOFF: I would say about ten days
21 ago. Mrs. Chepiga may know precisely.

22 MRS. CHEPIGA: Yes, last Wednesday, just
23 before we started court. Your Honor was not here Monday
24 and Tuesday, and they were served that morning.

25 THE COURT: October 12th.

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2 MRS. CHEPIGA: Yes, sir.

3 THE COURT: October 12, 1977. All right.

4 MR. JANIS: Where were we?

5 THE COURT: Up to the present moment I have
6 heard nothing from either defendant with respect to the
7 government's proposed requests to charge.

8 MR. JANIS: We are still on number four, I
9 think.

10 THE COURT: Move along rapidly. I want to
11 get this jury out to lunch, if I can.

12 MR. JANIS: On number five, what we object
13 to on page 4 is the part about even though he did not
14 personally accomplish the criminal conduct directly or
15 personally.

16 On page 5 -- your Honor, perhaps I can make
17 it easier instead of going through page by page. I will
18 state that we object throughout the instructions to all
19 the examples that were given in which the Court said
20 "for example" and then referred to the facts of this
21 case.

22 On request number six, page three -- pages
23 three through four -- I think this is on page four --
24 the Court states: In particular, be sure to bear in mind
25 that whether or not a particular defendant directly par-

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2 ticipated in the jurisdictional use charged in the specific
3 count is irrelevant to his overall liability.

4 First of all, we object to the use of the
5 word "irrelevant" and, secondly, I don't believe it is
6 necessarily a correct statement of the law because he
7 would -- in all these counts a defendant would only be
8 vicariously liable for the actions of somebody else if
9 in fact the jury finds first that beyond a reasonable
10 doubt he was a participant in the conspiracy, and if he
11 wasn't, then under Pinkerton he wouldn't be vicariously
12 liable at all.

13 On page 3 we would object to the second
14 paragraph. That is something the government should have
15 taken care of in its closing argument and should not
16 have been part of the charge.

17 On page 7 -- no objection to that.

18 Page 8 we object to the first full paragraph.
19 In government request number seven, page one omits any
20 mention of any exemption.

21 THE COURT: Any what?

22 MR. JANIS: Any mention of any of the exemptions
23 that the defendants argue about.

24 On number eight, we object to the word
25 "immaterial" in the fourth paragraph, as well as to the

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2 examples all through that request.

3 On page 7 we object to the language in which
4 the Court says, in the second paragraph: "But once
5 they moved forward down the road to putting their unlawful
6 plan into action, then the law says they are acting
7 dangerously and against the public good and deserve to
8 be punished."

9 Request number 10. We would object on page
10 two to the examples as we object throughout the charge to
11 the examples that were used, and the examples I am
12 referring to there are in the second paragraph.

13 Request number eleven. We object to virtually
14 the entire instruction here as being argumentative on
15 behalf of the government. It was something that the
16 Court excised -- most of this is sort of argument that
17 the Court excised in its pretrial instructions to the jury
18 about the securities law.

19 We also object in that in this portion of
20 the instruction there is no mention whatsoever of any
21 of the exemptions that the defendants relied upon.

22 The same objection on pages 3 and 4 of
23 that instruction.

24 Page 4, the second paragraph, the last sentence,
25 which begins: "Now, this is only one of the five objects"

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2 and so forth, we believe is improper emphasis on the
3 government's theory.

4 THE COURT: Page 4 of what?

5 MR. JANIS: Page 4 of number eleven, the second
6 paragraph.

7 MR. RAKOFF: You mean the first full paragraph?

8 MR. JANIS: The first full paragraph, yes.

9 Pages 6 and 7 before the (a), (b), (c) and
10 so forth. The Court omitted to state -- the last para-
11 graph -- the last sentence of the top paragraph says:
12 "I instruct you, however, that this exemption under
13 Rule 133 was not applicable to any shares held by Mahler
14 and Ubben if any of the following conditions were present."
15 We object because the Court did not also add "If they
16 were present and the defendants were aware of them."

17 THE COURT: You are not quoting my charge
18 at all. You are quoting the requests.

19 MR. JANIS: I followed the charge along, your
20 Honor.

21 THE COURT: But the charge was not what you
22 have just stated on the record. Go ahead.

23 MR. JANIS: That is my recollection. If I
24 am wrong, I apologize.

25 THE COURT: I am not interested in your

1 12GW

2 apology. It is perfectly plain to me what you are telling
3 me now are these prepared objections on requests to
4 charge received ten days ago which you are uttering now
5 and misstating what I charged.

6 MR. JANIS: If I am misstating it, I apologize
7 to the Court.

8 THE COURT: I am not saying that in any wrong
9 sense. I am saying you didn't pay any attention to what
10 was being charged. You were just reading the requests.

11 MR. JANIS: Your Honor, on page 6 of that
12 same charge, in subparagraph (c), we would object since
13 my understanding is -- I believe that's an incorrect
14 statement of the law. The Court said "more than 40,000
15 shares were sold directly or indirectly by the con-
16 spirators whether acting individually or jointly and
17 whether acting in their own names or the names of
18 nominees."

19 I don't believe that is a correct statement
20 of law to lump everybody into the 40,000 share category.

21 Also on the next page, in subparagraphs (e)
22 and (f), I think they are not correct statements of the
23 law -- excuse me. (e) we object to because it omits the
24 legitimate purpose of raising financing, and (f) I believe
25 is not a correct statement of the law.

1 13GW

2 Government request number twelve -- I can
3 sum that up by saying we object to that instruction to
4 the extent it departed from the instruction of Judge
5 Frankel.

6 On government number fifteen, the last sen-
7 tence of the first --

8 THE COURT: Nobody is ever going to be able
9 to find what you are talking about because there is no
10 such thing as number fifteen as given to the jury.

11 MR. JANIS: Your Honor, may we mark the
12 government requests for instructions?

13 THE COURT: The government requests have been
14 ravaged by my own corrections and amendments.

15 MR. JANIS: I will try as best I can to
16 identify them to your Honor. This is the only way I can
17 do it here.

18 On number fifteen, which is expert testimony
19 instruction, the Court stated "The government called one
20 expert witness in this case, Mr. Ivan Braverman, who
21 gave his opinion as to the financial statements prepared
22 by Bialek that appear in the proxy statements. He told
23 you it was his opinion that the financial statements were
24 improper and that the improprieties he observed were
25 not accidental but rather were purposeful."

14GW

1 The Court also instructed the jury, my
2 recollection is, that Mr. Hecht had been called as an
3 expert witness for the defense. In fact, that was
4 not our understanding about Mr. Hecht, and as far as
5 Mr. Braverman is concerned, our Problem with what the
6 Court stated there is Mr. Bialek has been acquitted
7 of doing just that, and I think the jury should be
8 aware of that fact if this sort of instruction is
9 going to be given.

11 On number 16, we object to number 16 as
12 virtually a government argument, and to the extent
13 that departs from the instruction that Judge Frankel
14 gave, we object to that.

15 THE COURT: My instruction happens to be
16 the standard in this community and in this circuit.
17 I haven't read Judge Frankel's.

18 MR. JANIS: Number 17. We object to the
19 Court's instruction which says: "The greater a person's
20 interest" -- this is the instruction concerning a
21 defendant's testimony -- "the greater a person's interest
22 in the case, the stronger the temptation to testify
23 falsely. It is perfectly obvious to all of you that
24 the men in this case with the deepest interest are
25 the defendants. In appraising his or their credibility,

1 15GW

2 you may take that into consideration."

3 We object to that instruction.

4 On government number 21, we object to the
5 last part of the instruction. This is the instruction
6 on protection of the public in which the Court said:
7 "But, on the other hand, if you find beyond a reason-
8 able doubt that the law has been violated as charged,
9 you should not hesitate because of sympathy or other
10 reason to render a verdict of guilty as a clear warning
11 that a crime of this character may not be committed
12 with impunity. The public is entitled to be assured
13 of this."

14 We object to this public deterrence instruc-
15 tion. I am sure your Honor will be glad to hear that
16 that concludes my comments.

17 MR. BLACKSTONE: I would like to join in
18 Mr. Janis' objections.

19 THE COURT: Nothing specific beyond that?

20 MR. BLACKSTONE: No.

21 MR. JANIS: Your Honor, may I also ask, if
22 I might, that the government's proposed charged be
23 marked as a court exhibit?

24 THE COURT: The government's proposed charges?

25 MR. JANIS: Yes.

1 16GW

2 THE COURT: I certainly am not going to mark
3 my --

4 MR. JANIS: If the government has an extra
5 copy.

6 THE COURT: I think all I need do is mark
7 a xerox.

8 MR. RAKOFF: I have a fresh copy.

9 THE COURT: The government's requests to
10 charge is marked Court's Exhibit 10.

xx 11 (Court's Exhibit 10 marked.)

12 MR. BLACKSTONE: Have all our exceptions
13 been overruled and rejected?

14 THE COURT: Yes. I regard them as having
15 no legal merit.

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(In open court.)

THE COURT: Ladies and gentlemen, there are no further statements that I feel called upon to make to you. It seems to me that in all probability you would prefer to go out to lunch now instead of an hour from now. If so, the marshal will be instructed accordingly.

If you decide when you want to go out to lunch, you tell the marshal. He will then attempt to make immediate arrangements. It is drizzling outside and it may be it will take a little time to make those arrangements.

So, if it will take a little time, you can start your deliberations.

Swear the marshal.

(A marshal was sworn.)

THE COURT: Ladies and gentlemen, we have here all of the 12 jurors who are handsily available for the deliberations on the case. In this case I am not going to discharge the alternates at this time but I am going to separate the alternates from the jury. I will ask the alternates to please proceed to Courtroom 109, downstairs, and be available there, should there arise any circumstance that I may wish to call on you for. That means you

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2 can move around reasonably freely, you can go to your
3 lunches and come back, but identify yourselves to the
4 jury clerk. Please be absolutely sure -- I am addressing
5 the four alternates -- that you have no conversations with
6 anybody about this case, that you don't allow anybody
7 to approach you to discuss the case, whether it be another
8 fellow juror or somebody else, and if there is any incident
9 that you as a matter of common sense and good judgment
10 feel is something that needs to be reported, unhesitatingly
11 call it to the attention of the clerk downstairs or the
12 clerk in this room I want to know about it immediately.

13 You are not yet discharged from your sworn
14 duty. You are being merely held in reserve for the moment.
15 Please act accordingly.

16 Again, I repeat to you, you can move around
17 freely. You can't talk, you can't listen, you can't
18 be approached and you can't have any traffic with anyone
19 in any respect regarding this case and be very leery of
20 anyone who endeavors to engage you in any discussion of
21 any kind whether it is about the weather or otherwise.

22 The three ladies and the gentleman, do you
23 have any cloaks or papers in there? Would you please
24 go out there now and the marshal will see that you can get
25 your things. You can leave your papers behind. If you

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2 need them they will be returned to you.

3 As soon as those folks have gotten their
4 things, the jurors may go out and decide on your next
5 course of business, and also whether you want to eat out,
6 or eat in, and how fast it can be accomplished.

7 The government will take care of all that
8 through the marshal.

9 All parties in the courtroom are directed
10 to remain here until the alternates have cleared the
11 floor and the jurors have gone out to the jury room to
12 deliberate.

13 (Court's Exhibit 11, Mahler's contentions,
14 was marked.)

15 (At 12:20 p.m. the jury retired to deliberate
16 upon a verdict.)